

<b>Tab 1</b>	<b>CS/SB 7010 by GO, MS;</b> (Similar to H 07027) OGSR/Servicemembers and the Spouses and Dependents of Servicemembers					
<del>386900</del>	D	S	WD	RC, Wright	Delete everything after	02/27 09:15 AM
176398	A	S	RCS	RC, Wright	Delete L.34 - 79:	02/27 09:15 AM
<b>Tab 2</b>	<b>CS/CS/SB 1794 by JU, EE, Hutson;</b> (Compare to CS/CS/H 07037) Constitutional Amendments					
763622	A	S	UNFAV	RC, Rodriguez	Before L.66:	02/27 11:52 AM
258150	A	S	RCS	RC, Hutson	Delete L.83 - 85:	02/27 11:52 AM
640730	A	S	RCS	RC, Hutson	Delete L.143 - 144:	02/27 11:52 AM
<del>641890</del>	A	S	WD	RC, Hutson	Delete L.248 - 538:	02/27 11:52 AM
<del>283462</del>	AA	S	WD	RC, Hutson	Delete L.139:	02/27 11:52 AM
<b>Tab 3</b>	<b>CS/CS/SB 662 by MS, ED, Wright;</b> (Similar to CS/CS/H 00445) Education and the Military					
254598	A	S	RCS	RC, Wright	Delete L.88 - 97:	02/27 09:33 AM
<b>Tab 4</b>	<b>SB 1492 by Wright;</b> (Similar to CS/CS/H 01137) Consumer Protection					
957714	D	S	FAV	BI, Wright	Delete everything after	02/04 02:38 PM
730048	AA	S	RCS	RC, Wright	Delete L.146 - 176:	02/27 12:38 PM
292600	AA	S	RCS	RC, Flores	btw L.325 - 326:	02/27 12:38 PM
<del>268682</del>	A	S	WD	RC, Flores	btw L.426 - 427:	02/25 11:24 AM
<b>Tab 5</b>	<b>CS/SB 358 by JU, Berman;</b> (Identical to CS/H 00505) Decedents' Property					
<b>Tab 6</b>	<b>CS/SB 368 by IS, Rouson;</b> (Similar to CS/H 00503) Tampa Bay Area Regional Transit Authority					
<b>Tab 7</b>	<b>CS/CS/SB 380 by JU, BI, Baxley;</b> (Similar to CS/CS/H 01439) Disposition of Personal Property					
<b>Tab 8</b>	<b>CS/SB 880 by BI, Baxley;</b> (Similar to CS/H 00437) Nurse Registry					
<b>Tab 9</b>	<b>CS/SB 1636 by GO, Baxley;</b> (Compare to CS/CS/CS/H 01013) Repeal of Advisory Bodies and Councils					
<b>Tab 10</b>	<b>CS/CS/SB 422 by IT, IS, Perry;</b> (Similar to CS/CS/H 00343) Recreational Vehicle Industries					
<b>Tab 11</b>	<b>CS/SB 814 by EE, Perry;</b> (Identical to CS/H 00491) Disposition of Surplus Funds by Candidates					
<b>Tab 12</b>	<b>CS/SB 1696 by ED, Perry (CO-INTRODUCERS) Cruz;</b> (Similar to CS/H 07011) Student Athletes					
704616	A	S	RCS	RC, Perry	btw L.20 - 21:	02/27 09:47 AM
<b>Tab 13</b>	<b>CS/SB 500 by HP, Harrell;</b> (Similar to CS/H 00309) Prohibited Acts by Health Care Practitioners					
<del>150030</del>	D	S	WD	RC, Harrell	Delete everything after	02/28 01:18 PM
<del>753712</del>	AA	S	WD	RC, Harrell	Delete L.34 - 36:	02/26 07:54 AM
<del>180070</del>	SD	S	WD	RC, Harrell	Delete everything after	02/28 01:18 PM
668434	D	S		RC, Harrell	Delete everything after	02/28 11:58 AM
559144	A	S	WD	RC, Harrell	btw L.41 - 42:	02/24 12:53 PM

<b>Tab 14</b>	<b>CS/CS/SB 1516</b> by <b>JU, HP, Harrell</b> ; (Compare to CS/H 01187) Organ Donation					
476992	A	S	RCS	RC, Harrell	Before L.47:	02/27 12:07 PM
522354	A	S	RCS	RC, Harrell	Delete L.47 - 60:	02/27 12:07 PM
664054	A	S	RCS	RC, Harrell	Delete L.136 - 189:	02/27 12:07 PM
219292	A	S	RCS	RC, Harrell	Delete L.310 - 327:	02/27 12:07 PM
<b>Tab 15</b>	<b>CS/CS/SB 646</b> by <b>IT, ED, Mayfield</b> ; (Compare to H 00251) Intercollegiate Athlete Compensation and Rights					
<b>Tab 16</b>	<b>CS/CS/SB 666</b> by <b>GO, CM, Mayfield</b> ; (Compare to CS/CS/H 01139) Florida Development Finance Corporation					
363230	A	S	RCS	RC, Mayfield	Delete L.93 - 150:	02/27 10:33 AM
347660	AA	S	RCS	RC, Mayfield	Delete L.103:	02/27 10:33 AM
<b>Tab 17</b>	<b>CS/CS/SB 1414</b> by <b>AG, EN, Mayfield</b> ; (Similar to CS/H 00777) Fish and Wildlife Activities					
193948	A	S	RCS	RC, Mayfield	btw L.79 - 80:	02/27 10:05 AM
<b>Tab 18</b>	<b>CS/CS/SB 752</b> by <b>CA, IS, Bean (CO-INTRODUCERS) Book, Cruz</b> ; (Identical to CS/H 00705) Emergency Sheltering of Persons with Pets					
<b>Tab 19</b>	<b>CS/SB 774</b> by <b>GO, Diaz</b> ; (Similar to H 07081) Public Records and Public Meetings/Applicants for President/State University or Florida College System Institution					
<b>Tab 20</b>	<b>CS/SB 1050</b> by <b>GO, Diaz</b> ; (Identical to CS/CS/H 01181) Disaster Volunteer Leave for State Employees					
<b>Tab 21</b>	<b>CS/SB 1258</b> by <b>CA, Diaz (CO-INTRODUCERS) Baxley</b> ; (Similar to CS/CS/H 00915) Commercial Service Airports					
230136	A	S		RC, Brandes	Delete L.64 - 70:	02/25 02:03 PM
<b>Tab 22</b>	<b>CS/SB 966</b> by <b>GO, Gainer</b> ; (Similar to CS/H 01035) Public Records/Disaster Recovery Assistance					
<b>Tab 23</b>	<b>CS/SB 1018</b> by <b>CJ, Stewart</b> ; (Similar to CS/H 00675) Exposure of Sexual Organs					
<b>Tab 24</b>	<b>CS/CS/SB 1508</b> by <b>IS, CJ, Taddeo</b> ; (Similar to CS/H 01281) Police Vehicles					
<b>Tab 25</b>	<b>SB 7056</b> by <b>GO</b> ; Public Records/Active Threat Assessment and Management Records					
<b>Tab 26</b>	<b>CS/CS/SB 512</b> by <b>AP, HP, Hutson</b> ; Nonembryonic Stem Cell Banks					
611058	D	S	RCS	RC, Hutson	Delete everything after	02/27 10:36 AM
<b>Tab 27</b>	<b>CS/CS/SB 680</b> by <b>CM, EN, Hutson (CO-INTRODUCERS) Gruters, Stewart, Berman, Book</b> ; (Similar to CS/H 00401) Shark Fins					
421662	A	S		RC, Hutson	Delete L.37:	02/28 11:51 AM
382092	A	S		RC, Hutson	btw L.68 - 69:	02/24 01:18 PM
<b>Tab 28</b>	<b>CS/SB 708</b> by <b>HP, Hutson</b> ; (Compare to CS/CS/H 00059) Automated Pharmacy Systems					
379430	D	S	RCS	RC, Hutson	Delete everything after	02/27 10:40 AM

**Tab 29** **CS/CS/SB 1872** by **BI, GO, Hutson**; (Similar to CS/H 01393) Public Records/Office of Financial Regulation/Financial Technology Sandbox Applications

**Tab 30** **SB 7066** by **AP**; Fees  
 738014 A S RC, Hutson Delete L.9 - 23: 02/27 02:24 PM

**Tab 31** **CS/SB 698** by **CJ, Book (CO-INTRODUCERS) Stewart**; (Compare to CS/H 01287) Reproductive Health  
 362874 A S RS RC, Book Delete L.42 - 186: 02/27 11:23 AM  
~~421718~~ SA S WD RC, Book Delete L.42 - 189: 02/25 06:41 PM  
 145098 SA S RCS RC, Book Delete L.42 - 189: 02/27 11:23 AM

**Tab 32** **SB 7002** by **CF**; (Identical to H 07023) OGSR/State Child Abuse Death Review Committee

**Tab 33** **CS/SB 1148** by **IS, Brandes**; (Similar to CS/CS/H 00971) Electric Bicycles

**Tab 34** **CS/CS/SB 1464** by **BI, IS, Flores**; (Similar to CS/CS/H 01095) Underground Facility Damage Prevention and Safety  
 191488 D S RCS RC, Flores Delete everything after 02/27 10:26 AM

**Tab 35** **CS/SB 1634** by **ED, Stargel**; (Similar to CS/H 01059) Parental Rights  
~~694008~~ A S WD RC, Rodriguez Delete L.102 - 103: 02/27 12:01 PM  
 957918 A S UNFAV RC, Rodriguez Delete L.140 - 162: 02/27 12:01 PM  
~~820782~~ A S WD RC, Rodriguez Delete L.147 - 149: 02/27 12:01 PM  
 232476 A S RS RC, Rodriguez Delete L.179: 02/27 12:01 PM  
 888014 SA S FAV RC, Stargel Delete L.177 - 188: 02/27 12:01 PM  
 396696 A S UNFAV RC, Rodriguez Delete L.263 - 268: 02/27 12:01 PM

**Tab 36** **SB 1272** by **Montford (CO-INTRODUCERS) Albritton**; Statewide Emergency Shelter Task Force

**Tab 37** **CS/CS/SB 1876** by **IT, AG, Montford (CO-INTRODUCERS) Gibson**; (Compare to CS/H 01063) State Hemp Program  
 492230 A S RC, Montford Delete L.95: 02/24 05:18 PM

**Tab 38** **SB 7048** by **IS**; Public Records/Public Shelter Space

**Tab 39** **SB 7052** by **IT**; Office of Public Counsel

**Tab 40** **SJR 7062** by **JU**; (Identical to H 07093) Citizen Initiative

**Tab 41** **SB 7064** by **JU**; (Identical to H 07091) Probation Violations

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

**RULES**  
**Senator Benacquisto, Chair**  
**Senator Gibson, Vice Chair**

**MEETING DATE:** Wednesday, February 26, 2020  
**TIME:** 9:00 a.m.—2:00 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Building

**MEMBERS:** Senator Benacquisto, Chair; Senator Gibson, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Farmer, Flores, Hutson, Lee, Montford, Passidomo, Rodriguez, Simmons, Simpson, Stargel, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 7010</b> Governmental Oversight and Accountability / Military and Veterans Affairs and Space (Similar H 7027)	OGSR/Servicemembers and the Spouses and Dependents of Servicemembers; Amending a provision which provides a public records exemption for the identification and location information of servicemembers and the spouses and dependents of servicemembers; expanding the exemption by removing the requirement that a servicemember submit a written statement that reasonable efforts have been made to protect the information in order to claim the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  GO 01/13/2020 Fav/CS RC 01/29/2020 Temporarily Postponed RC 02/12/2020 Temporarily Postponed RC 02/19/2020 Temporarily Postponed RC 02/26/2020 Fav/CS	Fav/CS Yeas 17 Nays 0
2	<b>CS/CS/SB 1794</b> Judiciary / Ethics and Elections / Hutson (Compare CS/CS/H 7037)	Constitutional Amendments; Requiring the Secretary of State to submit an initiative petition to the Legislature when a certain amount of signatures are obtained and verified; providing that a citizen may challenge in circuit court a petition circulator's registration with the Secretary of State; authorizing the Division of Elections or a supervisor of elections to provide petition forms in a certain electronic format; requiring that ballots containing constitutional amendments include certain disclosures and statements, in a specified order, etc.  EE 01/27/2020 Fav/CS JU 02/11/2020 Fav/CS RC 02/19/2020 Temporarily Postponed RC 02/26/2020 Fav/CS	Fav/CS Yeas 10 Nays 7

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>CS/CS/SB 662</b> Military and Veterans Affairs and Space / Education / Wright (Similar CS/CS/H 445, Compare CS/S 1498)	Education and the Military; Providing that a student whose parent is transferred or is pending transfer to a military installation within this state is considered a resident of the school district in which the military installation is located for the purpose of enrollment; revising the calculation of school grades for certain schools, etc.  ED 02/10/2020 Fav/CS MS 02/19/2020 Fav/CS RC 02/26/2020 Fav/CS	Fav/CS Yeas 16 Nays 0
4	<b>SB 1492</b> Wright (Similar CS/CS/H 1137, Compare CS/H 707, CS/S 1124)	Consumer Protection; Prohibiting consumer reporting agencies from charging to reissue or provide a new unique personal identifier to a consumer for the removal of a security freeze; authorizing the Department of Financial Services to disapprove the use of insurance agency names containing the words "Medicare" or "Medicaid"; prohibiting life insurers from writing new policies of industrial life insurance beginning on a certain date; providing that communication made to or by an insurer's representative, rather than to or by an insurer's agent, constitutes communication to or by the insurer, etc.  CM 01/28/2020 Favorable BI 02/04/2020 Fav/1 Amendment RC 02/26/2020 Fav/CS	Fav/CS Yeas 15 Nays 0
5	<b>CS/SB 358</b> Judiciary / Berman (Similar H 231, Identical CS/H 505)	Decedents' Property; Specifying that precious metals are tangible personal property for the purposes of the Florida Probate Code; specifying that certain attorneys and persons are not entitled to compensation for serving as a personal representative unless the attorney or person is related to the testator or unless certain disclosures are made before a will is executed; specifying that certain attorneys and persons are not entitled to compensation for serving as a trustee unless the attorney or person is related to the settlor or unless certain disclosures are made before the trust instrument is executed, etc.  JU 11/05/2019 Fav/CS CF 12/10/2019 Favorable RC 02/26/2020 Favorable	Favorable Yeas 15 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	<b>CS/SB 368</b> Infrastructure and Security / Rouson (Similar CS/H 503)	Tampa Bay Area Regional Transit Authority; Renaming the Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee as the Chairs Coordinating Committee; providing that a mayor's designated alternate may be a member of the governing board of the authority; deleting a provision requiring that the authority present the original regional transit development plan and updates to specified entities, etc.  IS 01/27/2020 Fav/CS CA 02/10/2020 Favorable RC 02/26/2020 Favorable	Favorable Yeas 15 Nays 0
7	<b>CS/CS/SB 380</b> Judiciary / Banking and Insurance / Baxley (Similar CS/CS/H 1439, Compare H 397)	Disposition of Personal Property; Specifying that a financial institution is not prohibited from disclosing specified information and providing copies of specified affidavits to certain persons relating to deceased account holders; authorizing a financial institution to pay funds on deposit in certain accounts to a specified family member of a decedent without any court proceeding, order, or judgment under certain circumstances; providing that estates of certain decedents are not subject to probate administration if certain conditions are met, etc.  BI 02/11/2020 Fav/CS JU 02/19/2020 Fav/CS RC 02/26/2020 Favorable	Favorable Yeas 14 Nays 0
8	<b>CS/SB 880</b> Banking and Insurance / Baxley (Similar CS/H 437)	Nurse Registry; Authorizing the use of licensed nurse registries for the placement of attendant care provided for workers' compensation purposes, etc.  BI 01/15/2020 Fav/CS HP 02/11/2020 Not Considered HP 02/18/2020 Favorable RC 02/26/2020 Favorable	Favorable Yeas 14 Nays 0
9	<b>CS/SB 1636</b> Governmental Oversight and Accountability / Baxley (Compare CS/CS/CS/H 1013, H 6027, CS/H 7039, S 388, S 1616, S 1688)	Repeal of Advisory Bodies and Councils; Repealing chapters 2003-287 and 2006-43, Laws of Florida, relating to the membership, powers, and duties of the Citrus/Hernando Waterways Restoration Council; removing the requirement that the Division of Historical Resources of the Department of State annually convene an ad hoc committee for purposes of administering the Great Floridians program; modifying procedures governing reclamation program applications to conform to the repeal of the Nonmandatory Land Reclamation Committee, etc.  GO 02/10/2020 Fav/CS CA 02/17/2020 Favorable RC 02/26/2020 Favorable	Favorable Yeas 14 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	<b>CS/CS/SB 422</b> Innovation, Industry, and Technology / Infrastructure and Security / Perry (Similar CS/CS/H 343, Compare CS/CS/CS/H 647, CS/CS/S 772)	Recreational Vehicle Industries; Preempting to the Department of Health the regulatory authority for permitting standards; providing standards for a damaged or destroyed recreational vehicle park to be rebuilt under certain circumstances; authorizing a park operator to refuse access to the premises and to eject transient guests or visitors based on specified conduct; providing for ejection from a park and specifying grounds and requirements therefor, etc.  IS 01/27/2020 Fav/CS IT 02/17/2020 Fav/CS RC 02/26/2020 Favorable	Favorable Yeas 16 Nays 0
11	<b>CS/SB 814</b> Ethics and Elections / Perry (Identical CS/H 491)	Disposition of Surplus Funds by Candidates; Prohibiting a candidate from donating surplus funds to a charitable organization that employs the candidate; authorizing any candidate to give certain surplus funds to the state or a political subdivision to be disbursed in a specified manner, etc.  EE 02/03/2020 Fav/CS GO 02/17/2020 Favorable RC 02/26/2020 Favorable	Favorable Yeas 16 Nays 0
12	<b>CS/SB 1696</b> Education / Perry (Similar CS/H 7011)	Student Athletes; Revising requirements for the availability of automated external defibrillators on school grounds; delaying implementation of a requirement that certain school employees and volunteers complete specified training; requiring that a medical evaluation be performed before a student begins conditioning; applying requirements related to medical evaluations to activities occurring outside the school year, etc.  ED 01/27/2020 Fav/CS CF 02/19/2020 Favorable RC 02/26/2020 Fav/CS	Fav/CS Yeas 14 Nays 0
13	<b>CS/SB 500</b> Health Policy / Harrell (Similar CS/H 309)	Prohibited Acts by Health Care Practitioners; Specifying names and titles that licensed health care practitioners are prohibited from using under certain circumstances; requiring the Department of Health to issue an emergency cease and desist order for specified violations, etc.  HP 01/14/2020 Fav/CS AP 02/05/2020 Favorable AP 02/06/2020 RC 02/26/2020 Temporarily Postponed	Temporarily Postponed

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	<b>CS/CS/SB 1516</b> Judiciary / Health Policy / Harrell (Compare CS/H 1187)	Organ Donation; Prohibiting a health insurance policy from limiting or excluding coverage solely on the basis that an insured is a living organ donor; revising a written document required for making an anatomical gift to include a specified statement relating to the responsibility of payment for fees associated with certain services; revising the responsibilities of a contractor procured by the agency for the purpose of educating and informing the public about anatomical gifts; prohibiting an organ transplantation facility from charging a donor or his or her family member any fee for services relating to the procurement or donation of organs, etc.  HP 01/28/2020 Fav/CS JU 02/11/2020 Fav/CS RC 02/26/2020 Fav/CS	Fav/CS Yeas 15 Nays 0
15	<b>CS/CS/SB 646</b> Innovation, Industry, and Technology / Education / Mayfield (Compare H 251, H 287, CS/CS/H 7051, S 582)	Intercollegiate Athlete Compensation and Rights; Authorizing certain intercollegiate athletes to earn compensation for the use of their names, images, or likenesses; prohibiting a postsecondary educational institution and other entities, institutions, and their employees from compensating intercollegiate athletes or prospective intercollegiate athletes for the use of their names, images, or likenesses; prohibiting the revocation or reduction of certain aid as a result of intercollegiate athletes earning certain compensation or obtaining specified representation; providing requirements for certain athlete agents, etc.  ED 02/10/2020 Fav/CS IT 02/17/2020 Fav/CS RC 02/26/2020 Favorable	Favorable Yeas 15 Nays 0
16	<b>CS/CS/SB 666</b> Governmental Oversight and Accountability / Commerce and Tourism / Mayfield (Compare CS/CS/H 1139, CS/H 1271)	Florida Development Finance Corporation; Requiring the executive director of the Department of Economic Opportunity to serve as a member of the board of directors of the Florida Development Finance Corporation; requiring the department to develop performance standards for the corporation and to include certain information relating to the standards in the department's annual report; requiring the corporation to submit an annual report containing specified information to the department, etc.  CM 01/21/2020 Fav/CS GO 02/10/2020 Fav/CS RC 02/26/2020 Fav/CS	Fav/CS Yeas 17 Nays 0

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17	<b>CS/CS/SB 1414</b> Agriculture / Environment and Natural Resources / Mayfield (Similar CS/H 777, Compare CS/S 906)	Fish and Wildlife Activities; Prohibiting certain harassment of hunters, trappers, and fishers within or on public lands or publicly or privately owned wildlife and fish management areas, or in or on public waters; authorizing the Fish and Wildlife Conservation Commission to designate additional annual free freshwater and saltwater fishing days; prohibiting the keeping, possessing, importing, selling, bartering, trading, or breeding of certain species except for educational, research, or eradication or control purposes; including green iguanas and species of the genera Salvator and Tupinambis in such prohibition, etc.  EN 02/03/2020 Fav/CS AG 02/11/2020 Fav/CS RC 02/26/2020 Fav/CS	Fav/CS Yeas 16 Nays 0
18	<b>CS/CS/SB 752</b> Community Affairs / Infrastructure and Security / Bean (Identical CS/H 705)	Emergency Sheltering of Persons with Pets; Requiring the Department of Education to assist the Division of Emergency Management in determining strategies regarding the evacuation of persons with pets; requiring counties that maintain designated shelters to designate a shelter that can accommodate persons with pets; specifying requirements for such shelters, etc.  IS 01/27/2020 Fav/CS CA 02/10/2020 Fav/CS RC 02/26/2020 Favorable	Favorable Yeas 15 Nays 0
19	<b>CS/SB 774</b> Governmental Oversight and Accountability / Diaz (Similar H 7081)	Public Records and Public Meetings/Applicants for President/State University or Florida College System Institution; Providing an exemption from public records requirements for any personal identifying information of an applicant for president of a state university or Florida College System institution; providing an exemption from public meeting requirements for any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or Florida College System institution, including any portion of a meeting that would disclose identifying information of such applicants; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc.  ED 01/27/2020 Favorable GO 02/17/2020 Fav/CS RC 02/26/2020 Favorable	Favorable Yeas 9 Nays 7

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20	<b>CS/SB 1050</b> Governmental Oversight and Accountability / Diaz (Similar CS/H 1181)	Disaster Volunteer Leave for State Employees; Reordering, revising, and providing definitions; revising conditions under which an employee may be granted leave under the Florida Disaster Volunteer Leave Act; specifying requirements and limitations, etc.  GO 01/13/2020 Fav/CS IS 02/17/2020 Favorable RC 02/26/2020 Favorable	Favorable Yeas 17 Nays 0
21	<b>CS/SB 1258</b> Community Affairs / Diaz (Similar CS/CS/H 915)	Commercial Service Airports; Directing the Auditor General to conduct specified audits of certain airports; requiring members of the governing body of a large-hub commercial service airport to comply with certain financial disclosure requirements; requiring the governing body of a municipality, county, or special district that operates a commercial service airport to establish and maintain a website; requiring commercial service airports to comply with certain contracting requirements, etc.  IS 01/27/2020 Favorable CA 02/17/2020 Fav/CS RC 02/26/2020 Not Considered	Not Considered
22	<b>CS/SB 966</b> Governmental Oversight and Accountability / Gainer (Similar CS/H 1035)	Public Records/Disaster Recovery Assistance; Providing an exemption from public records requirements for certain records and information provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  IS 01/21/2020 Favorable GO 02/10/2020 Fav/CS RC 02/26/2020 Favorable	Favorable Yeas 14 Nays 0
23	<b>CS/SB 1018</b> Criminal Justice / Stewart (Similar CS/H 675, Compare S 850)	Exposure of Sexual Organs; Increasing criminal penalties for exposure of sexual organs for a second or subsequent offense; authorizing warrantless arrests when a law enforcement officer has probable cause to believe that a person has violated s. 800.03, F.S., etc.  CJ 01/28/2020 Temporarily Postponed CJ 02/04/2020 Fav/CS JU 02/19/2020 Favorable RC 02/26/2020 Favorable	Favorable Yeas 17 Nays 0

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24	<b>CS/CS/SB 1508</b> Infrastructure and Security / Criminal Justice / Taddeo (Similar CS/H 1281)	Police Vehicles; Prohibiting a person from knowingly selling, exchanging, or transferring a police vehicle without removing any police markings from the vehicle; requiring law enforcement agencies to provide an official letter of notification that the police markings have been removed; exempting sales, exchanges, or transfers of police vehicles to members of the public for the purposes of collection or display from specified requirements, etc.  CJ 02/11/2020 Fav/CS IS 02/17/2020 Fav/CS RC 02/26/2020 Favorable	Favorable Yeas 15 Nays 0
25	<b>SB 7056</b> Governmental Oversight and Accountability (Compare S 7030)	Public Records/Active Threat Assessment and Management Records; Exempting from public records requirements active threat assessment and active threat management records; providing circumstances under which such records are considered active; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  RC 02/26/2020 Favorable	Favorable Yeas 15 Nays 0
26	<b>CS/CS/SB 512</b> Appropriations / Health Policy / Hutson (Linked S 7066)	Nonembryonic Stem Cell Banks; Providing that a nonembryonic stem cell bank that performs certain functions is deemed a clinic; prohibiting an entity other than certain nonembryonic stem cell banks and pharmacists from dispensing certain compounded drugs or products, with exceptions; prohibiting certain health care practitioners from practicing in a nonembryonic stem cell bank that is not licensed with the agency, etc.  HP 02/04/2020 Fav/CS AP 02/20/2020 Fav/CS RC 02/26/2020 Fav/CS	Fav/CS Yeas 17 Nays 0
27	<b>CS/CS/SB 680</b> Commerce and Tourism / Environment and Natural Resources / Hutson (Similar CS/H 401)	Shark Fins; Prohibiting the import of shark fins to this state; prohibiting the sale of shark fins within or the export of shark fins from this state, etc.  EN 02/03/2020 Fav/CS CM 02/18/2020 Fav/CS RC 02/26/2020 Not Considered	Not Considered

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Rules

Wednesday, February 26, 2020, 9:00 a.m.—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
28	<b>CS/SB 708</b> Health Policy / Hutson (Compare CS/CS/H 59)	Automated Pharmacy Systems; Authorizing a community pharmacy to use an automated pharmacy system under certain circumstances; providing that certain medicinal drugs stored in an automated pharmacy system for outpatient dispensing are part of the inventory of the pharmacy providing services through such system, etc.  HP 01/14/2020 Fav/CS IT 02/03/2020 Favorable RC 02/26/2020 Fav/CS	Fav/CS Yeas 13 Nays 4
29	<b>CS/CS/SB 1872</b> Banking and Insurance / Governmental Oversight and Accountability / Hutson (Similar CS/H 1393, Compare CS/CS/H 1391, Linked CS/CS/S 1870)	Public Records/Office of Financial Regulation/Financial Technology Sandbox Applications; Providing exemptions from public records requirements for certain information submitted to the Office of Financial Regulation in Financial Technology Sandbox applications and information relating to certain consultations; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc.  GO 02/10/2020 Fav/CS BI 02/19/2020 Fav/CS RC 02/26/2020 Not Considered	Not Considered
30	<b>SB 7066</b> Appropriations (Linked CS/CS/S 512)	Fees; Requiring certain nonembryonic stem cell banks to pay specified fees, etc.  RC 02/26/2020 Not Considered	Not Considered
31	<b>CS/SB 698</b> Criminal Justice / Book (Compare CS/H 1287, CS/H 1289, CS/S 1470)	Reproductive Health; Requiring commissioning parties and donors to enter into a contract with a donor bank, fertility clinic, or health care practitioner before donating reproductive material; requiring donor banks, fertility clinics, and health care practitioners to develop certain written best practice policies by a specified date; prohibiting a health care practitioner from implanting or inseminating a recipient with the health care practitioner's own reproductive material; prohibiting a health care practitioner from performing a pelvic examination on a patient without first obtaining the written consent of the patient or the patient's legal representative, etc.  JU 02/11/2020 Favorable CJ 02/18/2020 Fav/CS RC 02/26/2020 Fav/CS	Fav/CS Yeas 17 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, February 26, 2020, 9:00 a.m.—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
32	<b>SB 7002</b> Children, Families, and Elder Affairs (Identical H 7023)	OGSR/State Child Abuse Death Review Committee; Amending a provision relating to an exemption from public records and meeting requirements for certain identifying information held or discussed by the State Child Abuse Death Review Committee or a local committee; removing the scheduled repeal of the exemption, etc.  GO 01/27/2020 Favorable RC 02/26/2020 Not Considered	Not Considered
33	<b>CS/SB 1148</b> Infrastructure and Security / Brandes (Similar CS/CS/H 971)	Electric Bicycles; Revising definitions relating to the Florida Uniform Traffic Control Law; authorizing a county or municipality to enact an ordinance regulating the operation of electric bicycles on sidewalks or sidewalk areas when such use is permissible under federal law; expanding exceptions to a prohibition on persons driving certain vehicles on sidewalks and bicycle paths; requiring electric bicycles to comply with specified provisions of law, etc.  IS 02/03/2020 Fav/CS CA 02/10/2020 Favorable RC 02/26/2020 Not Considered	Not Considered
34	<b>CS/CS/SB 1464</b> Banking and Insurance / Infrastructure and Security / Flores (Similar CS/CS/H 1095)	Underground Facility Damage Prevention and Safety; Revising noncriminal violations and providing noncriminal violations relating to the transportation of certain hazardous materials; providing that certain incident reports must be submitted to, and investigated by, the State Fire Marshal or his or her agents; requiring Sunshine State One-Call of Florida, Inc., to review certain reports and complaints, etc.  IS 01/27/2020 Fav/CS BI 02/11/2020 Fav/CS RC 02/26/2020 Fav/CS	Fav/CS Yeas 17 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, February 26, 2020, 9:00 a.m.—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
35	<b>CS/SB 1634</b> Education / Stargel (Similar CS/H 1059)	Parental Rights; Designating the “Parents’ Bill of Rights”; providing that the state, its political subdivisions, other governmental entities, or other institutions may not infringe on parental rights without demonstrating specified information; providing that a parent of a minor child has specified rights relating to his or her minor child; requiring each district school board in consultation with parents, teachers, and administrators, to develop and adopt a policy to promote parental involvement in the public school system; prohibiting certain health care practitioners from taking specified actions without a parent’s written permission, etc.  JU 02/04/2020 Favorable ED 02/17/2020 Fav/CS RC 02/26/2020 Amendment Adopted - Temporarily Postponed	Amendment Adopted - Temporarily Postponed
36	<b>SB 1272</b> Montford	Statewide Emergency Shelter Task Force; Establishing the task force adjunct to the Department of Management Services; specifying the task force’s purpose; providing for the membership of the task force; providing requirements and restrictions for members of the task force; requiring the task force to report recommendations to the Governor and the Legislature by a specified date, etc.  IS 02/03/2020 Favorable GO 02/17/2020 Favorable RC 02/26/2020 Favorable	Favorable Yeas 17 Nays 0
37	<b>CS/CS/SB 1876</b> Innovation, Industry, and Technology / Agriculture / Montford (Compare CS/H 1063)	State Hemp Program; Revising the definition of the term “food” to include hemp extract for purposes of the Florida Food Safety Act; providing that a person operating a minor food outlet that sells hemp extract is not exempt from certain food permit requirements; providing that hemp extract that does not meet certain requirements will be considered adulterated or misbranded; prohibiting the sale of certain hemp extract products to individuals under a specified age, etc.  AG 01/28/2020 Temporarily Postponed AG 02/04/2020 Fav/CS IT 02/17/2020 Fav/CS RC 02/26/2020 Not Considered	Not Considered

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, February 26, 2020, 9:00 a.m.—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
38	<b>SB 7048</b> Infrastructure and Security	Public Records/Public Shelter Space; Creating an exemption from public records requirements for the name, address, and telephone number of a person which are held by an agency providing shelter or assistance to such person during an emergency; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  GO 02/17/2020 Favorable RC 02/26/2020 Not Considered	Not Considered
39	<b>SB 7052</b> Innovation, Industry, and Technology	Office of Public Counsel; Providing term limits for the Public Counsel; providing for the appointment and removal of the Public Counsel; requiring the Committee on Public Counsel Oversight to receive applications, conduct interviews, and appoint a Public Counsel by a specified date every 4 years; providing for the filling of vacancies, etc.  RC 02/26/2020 Temporarily Postponed	Temporarily Postponed
40	<b>SJR 7062</b> Judiciary (Identical HJR 7093)	Citizen Initiative; Proposing an amendment to the State Constitution to revise threshold requirements for the number of petitions signed by electors needed in order for a citizen initiative to amend or revise the State Constitution to be placed on the ballot, etc.  RC 02/26/2020 Temporarily Postponed	Temporarily Postponed
41	<b>SB 7064</b> Judiciary (Identical H 7091)	Probation Violations; Requiring a court to modify or continue a probationary term upon finding that a probationer has met all specified conditions, rather than any of the conditions, after a violation of probation, etc.  RC 02/26/2020 Favorable	Favorable Yeas 14 Nays 3

Other Related Meeting Documents

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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**BILL:** CS/CS/SB 7010

**INTRODUCER:** Rules Committee; Governmental Oversight and Accountability Committee; and Military and Veterans Affairs and Space Committee

**SUBJECT:** OGSR/ Servicemembers and the Spouses and Dependents of Servicemembers

**DATE:** February 27, 2020      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Brown</u>	<u>Caldwell</u>		<b>MS Submitted as Comm. Bill/Fav</b>
1.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>
2.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 7010 amends s. 119.0171(5)(k), Florida Statutes, to save from repeal the current exemption for contact information of a servicemember and his or her family that is held by an agency. Specifically, the bill narrows the exemption by protecting from public disclosure identification and location information of a current or former servicemember deployed to overseas service after September 11, 2001, for the United States Armed Forces, a reserve component of the Armed Forces, or the National Guard. Current law authorizes the servicemember to have served at any location after September 11, 2001. The exemption is scheduled for repeal October 2, 2020.

Protected information consists of the:

- Home address, telephone number, and date of birth of a servicemember;
- Home address, telephone number, date of birth, and place of employment of a spouse or dependent; and
- Name and location of a school attended by a spouse or dependent or a day care facility attended by a dependent.

To receive the public record exemption, in addition to the current requirement that a servicemember provide a written request including a statement that he or she has made reasonable efforts to protect the information from public disclosure, the bill also requires a copy

of the servicemember's DD-214 form or a statement from his or her commander of the servicemember's qualifying service.

The bill provides for future legislative review and repeal on October 2, 2025, unless the Legislature saves the exemption from repeal before that date.

This bill takes effect October 1, 2020.

## II. Present Situation:

### Access to Public Records – Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

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

### Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>5</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted the statutory definition of

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

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

<sup>3</sup> 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)

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

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

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

“public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>10</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup>

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

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.<sup>14</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

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

The Open Government Sunset Review Act<sup>16</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> It requires the automatic repeal of such exemption on October 2nd of the

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<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.07(1)(a), F.S.

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

<sup>11</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>12</sup> *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>13</sup> *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>14</sup> *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

<sup>15</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

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

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

<sup>18</sup> Section 119.15(2)(a) and (b), F.S., 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.

fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>19</sup>

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>20</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

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

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

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

### **Public Records Exemption for Contact Information of Servicemembers**

On November 30, 2014, the Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS) issued a Joint Intelligence Bulletin, *Islamic State of Iraq and the*

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

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

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

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

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

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

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

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

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

*Levant and Its Supporters Encouraging Attacks Against Military Personnel* (Joint Bulletin).<sup>27</sup> In it, the FBI and the DHS warn of potential attacks by the Islamic State of Iraq and the Levant (ISIL) on current and former servicemembers.<sup>28</sup> Specifically the report states,

The FBI recently received reporting indicating individuals located overseas are spotting and assessing like-minded individuals in the United States who are willing and capable of conducting attacks against current and former US-based members of the United States military.<sup>29</sup>

Based on this, the Joint Bulletin urged servicemembers to be mindful of their content and presence on online social media accounts.<sup>30</sup>

In 2015, the Legislature enacted a public records exemption for the contact and location information of a servicemember and his or her family.<sup>31</sup> Specifically, the public records exemption protects from disclosure the identification and location information of current or former active duty servicemembers who served after September 11, 2001 of:

- The United States Armed Forces;
- A reserve component of the Armed Forces; or
- The National Guard.

The public records exemption protects from disclosure the identification and location information of the servicemember, his or her spouse, and his or her dependents. The information protected by the exemption consists of the:

- Home address, telephone number (including the telephone number of a personal communications device), and date of birth of a servicemember;
- Home address, telephone number (including the telephone number of a personal communications device), date of birth, and place of employment of the spouse or dependent of a servicemember; and
- Name and location of a school attended by the spouse of a servicemember or a school or day care facility attended by a dependent of a servicemember.

The servicemember must request the exemption in writing and include a statement that the servicemember has made reasonable efforts to protect the information from public access through other means. The term “reasonable efforts” is not defined in law.

The original public necessity statement articulates as justification for the exemption that without the exemption the safety of servicemembers, their spouses, and their dependents is jeopardized. Specifically, the public necessity statement provided:

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<sup>27</sup> Federal Bureau of Investigation (FBI) and Department of Homeland Security (DHS), *Joint Intelligence Bulletin, Islamic State of Iraq and the Levant and Its Supporters Encouraging Attacks Against Military Personnel* (Nov. 30, 2014)(on file with the Senate Committee on Military and Veterans Affairs and Space).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at p. 2.

<sup>30</sup> *Id.* at p. 2.

<sup>31</sup> Chapter 2015-86, L.O.F.

Servicemembers perform among the most critical, most effective, and most dangerous operations in defense of our nation's freedom. Terrorist groups have threatened servicemembers and their families and have encouraged terrorist sympathizers to harm servicemembers and their families within the United States. One terrorist group has allegedly gathered the photographs and home addresses of servicemembers from public sources to create and publish a list of servicemembers in order to make such persons vulnerable to an act of terrorism.<sup>32</sup>

The public records exemption is scheduled to repeal on October 2, 2020.

## **Open Government Sunset Review**

### ***Survey on Public Records Exemption***

During the interim of 2019, Senate and House staff drafted a survey to query various entities on the public records exemption.<sup>33</sup> Staff sent the survey to 23 state agencies, and the associations for the supervisors of elections and the property appraisers for distribution. Staff received 80 responses, or 51 percent:

- State agencies - Of 22 surveyed, 18 responded, for an 82 percent response rate<sup>34</sup>;
- Supervisors of Elections - Of 67 surveyed, 21 responded, for a 31 percent response rate; and
- Property Appraisers. - Of 67 surveyed, 41 responded, for a 61 percent response rate.

### ***Requests for Public Record Exemption***

When asked about the number of requests made since the exemption took effect, the year 2015, entities receiving the top requests are as follows:

- Agencies - The Department of Highway Safety and Motor Vehicles received 512 requests, the Fish and Wildlife Conservation Commission received 34, and the Department of Law Enforcement received 20 to date;
- Supervisors of Elections - Volusia County received 1,465 requests, Pinellas received 325, and Okaloosa received 243 requests to date;
- Property Appraisers - Brevard County received 1,000 requests; Miami-Dade received 95, and Pinellas County received 76 requests to date.<sup>35</sup>

Many entities responded that they have received zero requests for this exemption<sup>36</sup>, and a few did not answer whether they had received requests.

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<sup>32</sup> *Id.*

<sup>33</sup> *Open Government Sunset Review Questionnaire, Identification and Location Information of Servicemembers* (July 2019)(on file with the Senate Committee on Military and Veterans Affairs and Space).

<sup>34</sup> Surveys were sent to the Departments of Agriculture and Consumer Services, Business and Professional Regulation, Children and Families, Corrections, Economic Opportunity, Education, Elder Affairs, Environmental Protection, Financial Services, Health, Highway Safety and Motor Vehicles, Juvenile Justice, Law Enforcement, Legal Affairs, Lottery, Management Services, Military Affairs, Revenue, State, Transportation, Veterans' Affairs, and the Fish and Wildlife Conservation Commission.

<sup>35</sup> A number of agencies and counties report that they maintain data on requests for public records exemptions in the aggregate, so that they have no way of discerning how many requests are made for this specific public records exemption.

<sup>36</sup> Entities reporting that they have not received any requests for this public records exemption are: Agencies - the Departments of Corrections, Economic Opportunity, Environmental Protection, Health, Juvenile Justice, and Legal Affairs;

### ***Process for Request of Public Record Exemption***

Respondents were asked if the agency has a process in place for a servicemember to request a public records exemption. Entities responded that some provide a form, online, in person or both while others handle it case by case. Several agencies include a public records exemption request form in the packet provided to new employees. Forms typically provide a checkoff list of available exemptions.<sup>37</sup> A number of counties specifically identify form DOS-119, provided by the Florida Department of State, as the Public Records Exemption Request form in use by their office.<sup>38</sup> The form requires servicemembers to have served after September 11, 2001, and for the applicant to certify, in signing the form that reasonable efforts have been made to protect the information from public disclosure.<sup>39</sup>

### ***Complaints About Public Records Exemption***

When asked whether the agency has received complaints about the exemption, nine entities responded that they had received at least one. Most complaints were made to the Property Appraiser and may indicate the unique nature of the information maintained by their office and accessed for various purposes. As noted by the St. Johns County Property Appraiser:

We occasionally hear verbal complaints, because once someone has made their information confidential within our office, we can no longer discuss any sort of property information with them electronically or over the phone. Further, other organizations or departments (such as the building department) cannot look up the tax payer's information electronically. So, if the taxpayer is trying to pull a permit, or refinance their house, they physically have to come in with their driver's license or ID to receive such information when usually those organizations can simply pull it from our website.<sup>40</sup>

### ***Recommendation on Exemption***

When asked whether an entity would recommend continuing the exemption, of total respondents, 37 recommended reenacting the exemption as is. In contrast, 25 respondents recommended reenactment with changes. Of these, 10 respondents recommended deleting the reasonable efforts requirement or defining the term.<sup>41</sup> Twelve other respondents specifically requested that

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Property Appraisers - Alachua, Baker, Bradford, Charlotte, Columbia, Desoto, Dixie, Gilchrist, Gulf, Hardee, Hendry, Indian River, Liberty, Madison, Okeechobee, Putnam, Taylor, Union, and Wakulla counties; and Supervisors of Election - Citrus, Collier, Holmes, and Union counties.

<sup>37</sup> These are the Departments of Education, Environmental Protection, Financial Services, Health, Legal Affairs, Management Services, Military Affairs, and Revenue.

<sup>38</sup> These are Bay, Collier, Flagler, Levy, Monroe, Pinellas, Putnam, Volusia, and Walton counties.

<sup>39</sup> Florida Department of State, *Public Records Exemption Request, Form DOS-119; Rev. 06/2015*; available at <https://dos.myflorida.com/media/695507/public-records-exemption-formdos-119.pdf>.

<sup>40</sup> St. Johns County Property Appraiser, *Survey Response* (July 18, 2019) (on file with the Senate Committee on Military and Veterans Affairs and Space).

<sup>41</sup> These are: the Florida Department of Law Enforcement; the Property Appraisers of Charlotte, Duval, Hernando, Miami-Dade, Palm Beach, St. Lucie, and Wakulla counties; and the Supervisors of Election of Collier and Union counties.

the Legislature lift the restriction on the post-September 11, 2001 date.<sup>42</sup> Remaining respondents either did not answer the question or specified that they wished to remain neutral.

Only the Alachua County Property Appraiser, St. Johns County Property Appraiser, and Wakulla County Property Appraiser recommended repeal of the exemption.<sup>43</sup>

### ***Current Threat to Servicemembers***

The FBI provided a letter<sup>44</sup> to the Florida Senate updating threats to servicemembers since its issuance of the Joint Bulletin of 2014. In the letter, the FBI submitted that on September 23, 2016, Ardit Ferizi was sentenced to 20 years imprisonment for providing material support to the Islamic State of Iraq and the Levant (ISIL), and accessing databases containing personal identifying information of tens of thousands of people, including military servicemembers and other governmental personnel. Mr. Ferizi subsequently culled the personal identifying information of servicemembers and other government personnel, which totaled about 1,300 individuals, and provided it to an ISIL member, who on August 11, 2015, posted by tweet a hit list that contained the personal identifying information of the individuals.

In February 2019, the FBI Jacksonville Field Office identified 12 new web pages that were hosting the ISIL hit list with all or some of the personal identifying information of the 1,300 individuals. One of the pages states:

O Crusaders, as you continue your ag[g]ression towards the Islamic State and your bombing campaign against the muslims, know that we are in your emails and computer systems, watching and recording your every move ... . [W]e are extracting confidential data and passing on your personal information to the soldiers ... who ... will strike at your necks in your own lands!<sup>45</sup>

### ***Requirement of Reasonable Efforts***

As noted above, what is meant by “a reasonable effort” to protect information from public access is not defined in law. Prior to 2017, various other public record exemptions required the requesting applicant to include a written statement that a reasonable effort had been made to protect the information from other sources.

In 2017, however, the Legislature deleted this requirement from the following exemptions afforded to:

- A general magistrate;
- A special magistrate;

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<sup>42</sup> These are: the Departments of Elder Affairs, Highway Safety and Motor Vehicles, Law Enforcement, and Military Affairs; the Property Appraisers of Brevard and Polk Counties; and the Supervisors of Election of Hernando, Levy, Okaloosa, Pinellas, St. Johns, and Volusia counties.

<sup>43</sup> “The concept, first enacted for law enforcement decades ago, has been eclipsed by the continued advancement of available technology.” Alachua County Property Appraiser, *Survey Response* (July 25, 2019) (on file with the Senate Committee on Military and Veterans Affairs and Space).

<sup>44</sup> FBI, *Re: Update on Department of Justice Press Release 16-1085 regarding Ardit Ferizi* (Oct. 11, 2019)(on file with the Senate Committee on Military and Veterans Affairs and Space).

<sup>45</sup> *Id.*

- A judge of compensation claims;
- An administrative law judge of the Division of Administrative hearings;
- A child support enforcement hearing officer;
- A current or former guardian ad litem;
- A current or former investigator or inspector of the Department of Business and Professional Regulation;
- A county tax collector;
- A current or former employee of the Department of Health;
- A current or former impaired practitioner consultant retained by an agency or whose duties result in a determination of a person's skill and safety to practice a licensed profession;
- A current or former emergency medical technician or paramedic; or
- A current or former employee of an inspector general or internal audit department.<sup>46</sup>

In its public necessity statement, the Legislature notes:

Requiring these personnel prove that they made reasonable efforts to protect their identification and location information is an added burden on these individuals as well as on agencies . . . . The extent to which these individuals must protect their information from public accessibility is unclear. It is also unclear how much proof an agency needs . . . . The burden on an agency . . . adversely impacts the effective and efficient administration of government in establishing who is eligible for an exemption. Relatively few public record exemptions require an individual to prove that he or she made reasonable efforts to protect his or her information . . . . Such inconsistencies among public record exemptions reduce accuracy and efficiency when redacting exempt information . . . . It is not in the public interest for the public to receive inaccurately redacted information.<sup>47</sup>

Currently, in addition to the servicemember exemption the only remaining requirement of reasonable efforts applies to an exemption for a current or former United States attorney, assistant United States attorney, judge of the United States Court of Appeal, United States district judge, or United States magistrate.<sup>48</sup>

### ***Other Exemptions***

Part of the OGSR requires a review of other exemptions that may protect the same public record or meeting, and consideration of whether multiple exemptions may be merged. While it is possible that portions of information may be protected if a servicemember qualifies under another exemption, for example if the servicemember works in law enforcement<sup>49</sup>, s. 119.071(5)(k), F.S., uniquely protects the identifying and location information of servicemembers and their families. Additionally, no other exemption would be appropriate for

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<sup>46</sup> Chapter 2017-66, L.O.F.

<sup>47</sup> *Id.*

<sup>48</sup> Section 119.071(5)(i), F.S.

<sup>49</sup> Section 119.071(4)(d), F.S., provides a public records exemption for home addresses, phone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel.

merging. Therefore, the information and application of this exemption is not duplicated elsewhere in law, nor can it be merged with another exemption.

### III. Effect of Proposed Changes:

The public necessity statement for the original exemption provides as justification that without the exemption the safety of servicemembers, their spouses, and their dependents is jeopardized. Based on information received from the FBI, that concern has not lifted. Therefore, the bill reenacts the public record exemption for servicemembers and their families.

Although some survey respondents also requested that the Legislature expand the exemption to all servicemembers, the bill does not do so, as the intended target of the threat appears to continue to apply to servicemembers who served overseas after September 11, 2001.<sup>50</sup> Therefore, the bill narrows the exemption by limiting the application of the exemption to only those servicemembers deployed to overseas service for the United States Department of Defense after September 11, 2001.

The bill defines overseas service as participation in an overseas military operation, such as crisis response, infrastructure and coalition support for operations in Iraq and Afghanistan, humanitarian assistance in the Middle East and North Africa, and embassy security, as well as other needs abroad in the Global War on Terrorism.

To receive the public record exemption, in addition to the current requirement that a servicemember provide a written request including a statement of reasonable efforts, the bill requires a copy of the servicemember's DD-214<sup>51</sup> form or a statement from his or her commander of the servicemember's qualifying service.

The bill provides for future legislative review and repeal on October 2, 2025, unless the Legislature saves the exemption from repeal before that date.

The bill takes effect October 1, 2020.

### IV. Constitutional Issues:

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

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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<sup>50</sup> FBI, *supra* note 40.

<sup>51</sup> A DD-214, also known as a Certificate of Release or Discharge from Active Duty, is a report of separation from active duty or at least 90 consecutive days of active duty training. The DD-214 is provided to a servicemember so that he or she may verify military service for benefits, retirement, employment, and membership in veterans' organizations. Information on the DD-214 includes the date and place of entry into and from active duty; last duty assignment and rank; military job specialty; foreign service; and separation information. National Personnel Records Center, National Archives, *DD-214, Discharge Papers and Separation Documents*, available at <https://www.archives.gov/personnel-records-center/dd-214> (last visited Feb. 26, 2020).

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

Article I, s. 24(c) of the State Constitution requires 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. Because the bill does not expand the public record exemption, a two-thirds vote is not required.

***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. Because the bill does not expand the public record exemption, a statement of public necessity is not included.

***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 the personal identifying information of servicemembers contained in a record held by government agencies from use by terrorist groups. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public record request.

C. **Government Sector Impact:**

Agencies will continue to incur costs relating to the redaction of exempt records.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 of the Florida Statutes.

**IX. Additional Information:**

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

**CS/CS by Rules on February 26, 2020:**

The committee substitute:

- Narrows the application of the exemption from a servicemember who served after September 11, 2001, to a servicemember deployed to overseas service for the United States Department of Defense after September 11, 2001;
- Restores the reasonable efforts requirement and additionally requires a DD-214 form or statement from the servicemember's commander as proof of overseas service; and
- Defines as overseas service participation in an overseas military operation, crisis response, infrastructure and coalition support for operations in Iraq and Afghanistan, humanitarian assistance in the Middle East and North Africa, and embassy security, as well as other needs abroad in the Global War on Terrorism.

**CS by Governmental Oversight and Accountability on January 13, 2020:**

The committee substitute revises the public necessity statement to explain that the exemption is meant to thwart targeted threats on servicemembers from terrorist groups.

- B. **Amendments:**

None.



386900

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/27/2020	.	
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	.	

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The Committee on Rules (Wright) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

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

(5) OTHER PERSONAL INFORMATION.—

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

a. "Identification and location information" means the:



386900

12 (I) Home address, telephone number, and date of birth of a  
13 servicemember, and the telephone number associated with a  
14 servicemember's personal communication device.

15 (II) Home address, telephone number, date of birth, and  
16 place of employment of the spouse or dependent of a  
17 servicemember, and the telephone number associated with such  
18 spouse's or dependent's personal communication device.

19 (III) Name and location of a school attended by the spouse  
20 of a servicemember or a school or day care facility attended by  
21 a dependent of a servicemember.

22 b. "Servicemember" means a current or former member of the  
23 Armed Forces of the United States, a reserve component of the  
24 Armed Forces of the United States, or the National Guard, who  
25 was deployed to an Overseas Contingency Operation of the United  
26 States Department of Defense ~~served~~ after September 11, 2001.

27 c. "Overseas Contingency Operation" means overseas military  
28 operations such as crisis response, infrastructure and coalition  
29 support for operations in Iraq and Afghanistan, humanitarian  
30 assistance in the Middle East and North Africa, and embassy  
31 security, as well as other needs abroad in the Global War on  
32 Terrorism.

33 2. Identification and location information held by an  
34 agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the  
35 State Constitution if a servicemember submits to an agency that  
36 has custody of the identification and location information:

37 a. A written request to exempt the identification and  
38 location information from public disclosure; ~~and~~

39 b. A copy of the servicemember's United States Department  
40 of Defense form DD-214 or a statement from the servicemember's



386900

41 commander that the servicemember served in an Overseas  
42 Contingency Operation after September 11, 2001; and

43 c. A written statement that the servicemember ~~he or she~~ has  
44 made reasonable efforts to protect the identification and  
45 location information from being accessible through other means  
46 available to the public.

47 3. This exemption applies to identification and location  
48 information held by an agency before, on, or after the effective  
49 date of this exemption.

50 ~~4. This paragraph is subject to the Open Government Sunset~~  
51 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
52 ~~on October 2, 2020, unless reviewed and saved from repeal~~  
53 ~~through reenactment by the Legislature.~~

54 Section 2. This act shall take effect October 1, 2020.

55  
56 ===== T I T L E A M E N D M E N T =====

57 And the title is amended as follows:

58 Delete everything before the enacting clause  
59 and insert:

60 A bill to be entitled  
61 An act relating to a review under the Open Government  
62 Sunset Review Act; amending s. 119.071, F.S., which  
63 provides a public records exemption for the  
64 identification and location information of a  
65 servicemember who served after September 11, 2001, and  
66 the spouse and dependents of the servicemember;  
67 narrowing the exemption by requiring the servicemember  
68 to have been deployed to an Overseas Contingency  
69 Operation of the United States Department of Defense;



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70       revising and defining terms; requiring a servicemember  
71       to provide certain documentation to the custodial  
72       agency in order for his or her identification and  
73       location information to be subject to the exemption;  
74       removing the scheduled repeal of the exemption;  
75       providing an effective date.



176398

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2020	.	
	.	
	.	
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The Committee on Rules (Wright) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 34 - 79  
and insert:

b. “Overseas service” means participation in an overseas military operation, such as crisis response, infrastructure and coalition support for operations in Iraq and Afghanistan, humanitarian assistance in the Middle East and North Africa, and embassy security, as well as other needs abroad in the Global War on Terrorism.

c. “Servicemember” means a current or former member of the



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12 Armed Forces of the United States, a reserve component of the  
13 Armed Forces of the United States, or the National Guard, who  
14 was deployed to overseas service for the United States  
15 Department of Defense served after September 11, 2001.

16 2. Identification and location information held by an  
17 agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the  
18 State Constitution if a servicemember submits to an agency that  
19 has custody of the identification and location information:

20 a. A written request to exempt the identification and  
21 location information from public disclosure; ~~and~~

22 b. A copy of the servicemember's United States Department  
23 of Defense form DD-214 or a statement from the servicemember's  
24 commander that the servicemember deployed to overseas service  
25 after September 11, 2001; and

26 c. A written statement that the servicemember ~~he or she~~ has  
27 made reasonable efforts to protect the identification and  
28 location information from being accessible through other means  
29 available to the public.

30 3. This exemption applies to identification and location  
31 information held by an agency before, on, or after the effective  
32 date of this exemption.

33 4. This paragraph is subject to the Open Government Sunset  
34 Review Act in accordance with s. 119.15 and shall stand repealed  
35 on October 2, 2025 ~~2020~~, unless reviewed and saved from repeal  
36 through reenactment by the Legislature.

37  
38 ===== T I T L E A M E N D M E N T =====

39 And the title is amended as follows:

40 Delete lines 7 - 13



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41 and insert:

42       servicemembers; revising and defining terms; narrowing  
43       the exemption by requiring the servicemember to have  
44       been deployed to overseas service for the United  
45       States Department of Defense; requiring a  
46       servicemember to provide certain documentation to the  
47       custodial agency in order for his or her  
48       identification and location information to be subject  
49       to the exemption; revising the scheduled repeal of the  
50       exemption; providing an effective date.

By the Committees on Governmental Oversight and Accountability;  
and Military and Veterans Affairs and Space

585-02219-20

20207010c1

1 A bill to be entitled  
2 An act relating to a review under the Open Government  
3 Sunset Review Act; amending s. 119.071, F.S., which  
4 provides a public records exemption for the  
5 identification and location information of  
6 servicemembers and the spouses and dependents of  
7 servicemembers; expanding the exemption by removing  
8 the requirement that a servicemember submit a written  
9 statement that reasonable efforts have been made to  
10 protect the information in order to claim the  
11 exemption; providing for future legislative review and  
12 repeal of the exemption; providing a statement of  
13 public necessity; providing an effective date.  
14  
15 Be It Enacted by the Legislature of the State of Florida:  
16  
17 Section 1. Paragraph (k) of subsection (5) of section  
18 119.071, Florida Statutes, is amended to read:  
19 119.071 General exemptions from inspection or copying of  
20 public records.—  
21 (5) OTHER PERSONAL INFORMATION.—  
22 (k)1. For purposes of this paragraph, the term:  
23 a. "Identification and location information" means the:  
24 (I) Home address, telephone number, and date of birth of a  
25 servicemember, and the telephone number associated with a  
26 servicemember's personal communication device.  
27 (II) Home address, telephone number, date of birth, and  
28 place of employment of the spouse or dependent of a  
29 servicemember, and the telephone number associated with such

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

585-02219-20

20207010c1

30 spouse's or dependent's personal communication device.  
31 (III) Name and location of a school attended by the spouse  
32 of a servicemember or a school or day care facility attended by  
33 a dependent of a servicemember.  
34 b. "Servicemember" means a current or former member of the  
35 Armed Forces of the United States, a reserve component of the  
36 Armed Forces of the United States, or the National Guard, who  
37 served after September 11, 2001.  
38 2. Identification and location information held by an  
39 agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the  
40 State Constitution if a servicemember submits to an agency that  
41 has custody of the identification and location information+  
42 ~~a-~~ a written request to exempt the identification and  
43 location information from public disclosure, ~~and~~  
44 ~~b. A written statement that he or she has made reasonable~~  
45 ~~efforts to protect the identification and location information~~  
46 ~~from being accessible through other means available to the~~  
47 ~~public.~~  
48 3. This exemption applies to identification and location  
49 information held by an agency before, on, or after the effective  
50 date of this exemption.  
51 4. This paragraph is subject to the Open Government Sunset  
52 Review Act in accordance with s. 119.15 and shall stand repealed  
53 on October 2, 2025 ~~2020~~, unless reviewed and saved from repeal  
54 through reenactment by the Legislature.  
55 Section 2. The Legislature finds that it is a public  
56 necessity to make identification and location information of  
57 current or former members of the Armed Forces of the United  
58 States, a reserve component of the Armed Forces of the United

Page 2 of 3

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

585-02219-20

20207010c1

59 States, or the National Guard, who served after September 11,  
60 2001, and their spouses and dependents, exempt from s.  
61 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
62 State Constitution, regardless of whether such individuals made  
63 reasonable efforts to protect such information from being  
64 public. Servicemembers perform among the most critical, most  
65 effective, and most dangerous operations in defense of our  
66 nation's freedom. Terrorist groups continue to threaten  
67 servicemembers and their families and encourage terrorist  
68 sympathizers to harm servicemembers and their families within  
69 the United States. The Legislature finds that allowing public  
70 access to the identification and location information of current  
71 or former servicemembers and their families jeopardizes the  
72 safety of servicemembers, their spouses, and their dependents.  
73 The Legislature finds that protecting the safety and security of  
74 current or former members of the Armed Forces of the United  
75 States, a reserve component of the Armed Forces of the United  
76 States, or the National Guard, who served after September 11,  
77 2001, and their spouses and dependents, outweighs any public  
78 benefit that may be derived from the public disclosure of the  
79 identification and location information.

80 Section 3. This act shall take effect October 1, 2020.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

26 FEB 2020  
Meeting Date

SB 7010  
Bill Number (if applicable)

Topic OG SA/ Servicemen and the Spouses and Dependents

Amendment Barcode (if applicable)

Name Roy Clark

Job Title LEGISLATIVE AFFAIRS DIRECTOR

Address 400 S. MONROE ST. STE 2105

Phone 850-487-1533

Street

TALLAHASSEE

City

FL

State

32399

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Dept. of Veterans Affairs

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020

Meeting Date

7010

Bill Number (if applicable)

Topic Senate Bill 7010 and Amendments

Amendment Barcode (if applicable)

Name MARK OGLESBY

Job Title Director Legislative Affairs => Dept Military Affairs

Address 200 South Monroe Street

Phone (850) 414-9049

Tallahassee

City

FL

State

32399

Zip

Email mark.t.oglesby.nfg@mail.mil

Speaking: [ ] For [ ] Against [ ] Information

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

Representing FL Department of Military Affairs

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/CS/SB 1794

INTRODUCER: Rules Committee; Judiciary Committee; Ethics and Elections Committee; and Senator Hutson

SUBJECT: Constitutional Amendments

DATE: February 27, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Roberts</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Fox</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 1794 modifies the process for amending the State Constitution. Most of the bill's changes apply only to citizen initiative amendments, including where the bill:

- Expands the scope of Florida Supreme Court review to include facial validity of the proposal under the U.S. Constitution.
- Narrows the role of the Financial Impact Estimating Conference (FIEC) to estimating the proposal's financial impact on state and local governments and the state budget (removing impacts to the local governments and *economies*).
- Statutorily authorizes the Senate President and House Speaker to direct legislative staff to analyze any other impacts of the proposal.
- Increases the geographic diversity and number of petition signatures that must be verified before the Secretary of State refers the proposal to the Attorney General and the FIEC.
- Creates a cause of action for citizens to challenge a petition circulator's registration.
- Provides that petition signatures are valid until the next February 1 of an even-numbered year, which prevents signatures from being held over for a subsequent election.
- Requires a supervisor of elections to charge the actual cost for verifying a petition signature in lieu of the current rule of the lesser of 10 cents/signature or the actual cost, and requiring the Department of State to determine the cost annually by rule.
- Providing that a signature obtained illegally, including by an unregistered paid petition circulator, is invalid.

- Allowing the Division of Elections or a supervisor of elections to provide a petition form in PDF format, with printing costs to be borne by the sponsor.
- Requiring the ballot for a citizen initiative include a bold-font statement that the FIEC:
  - Estimates a positive financial impact;
  - Estimates an indeterminate financial impact;
  - Estimates a net negative impact on the state budget or cannot reach a consensus, along with indicating the *possible* negative tax and government services impacts.

Additionally, the bill requires every proposed constitutional amendment—not just one originating as a citizen initiative—to be reviewed by the FIEC and requires the ballot for every amendment to include a financial impact statement.

The bill is effective upon becoming a law and, by its express terms, applies to 2020 ballot initiatives, though it *does not* “affect the validity of any petition form gathered before the effective date of this act or any contract entered into before the effective date of this act.”

## II. Present Situation:

The Florida Constitution may be amended only if the voters approve an amendment originating from the Legislature, the Constitution Revision Commission, the Taxation and Budget Reform Commission, a constitutional convention, or a citizen initiative.<sup>1</sup> A citizen initiative must embrace only one subject (unless it concerns limiting the power of government to raise revenue),<sup>2</sup> but proposals originating from the other sources are not so limited.<sup>3</sup>

### Citizen Initiative Process

The Constitution requires the sponsor of an amendment proposed by citizen initiative to obtain a specified number of signatures on a petition to place the proposal on the ballot.<sup>4</sup> The petition must contain the signatures of a number of voters equal to eight percent of the votes cast in the state in the preceding presidential election as well as eight percent of the vote cast in that election in each of at least half of the congressional districts of the state.<sup>5</sup> The number of signatures required for placement on the 2018 or 2020 ballot is 766,200, with a specified number of that total required to come from at least 14 of the state’s congressional districts.<sup>6</sup>

Before gathering signatures for an amendment proposed by citizen initiative, the sponsor of the proposed amendment must register as a Florida political committee.<sup>7</sup> The sponsor must then gather the required number of signatures. The sponsor must present each signature to the appropriate supervisor of elections (supervisor) where the signee resides within 30 days after gathering the signature for validation.<sup>8</sup>

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<sup>1</sup> FLA. CONST. art. XI.

<sup>2</sup> FLA. CONST. art. XI s. 3.

<sup>3</sup> FLA. CONST. art. XI, ss. 1, 2, 4, 6.

<sup>4</sup> FLA. CONST. art. XI, s. 3.

<sup>5</sup> *Id.*

<sup>6</sup> Florida Dep’t of State, *2018 Initiative Petition Handbook*, <https://dos.myflorida.com/media/697659/initiative-petitionhandbook-2018-election-cycle-eng.pdf> (last visited Feb. 6, 2020) [hereinafter DOS, *Initiative Petition Handbook*].

<sup>7</sup> Sections 100.371(2) and 106.03, F.S.

<sup>8</sup> Section 100.371(7), F.S.

If the sponsor uses a paid petition circulator to gather signatures, the circulator must register with the Secretary before collecting signatures.<sup>9</sup> Failure of a paid petition circulator to register before collecting petition forms is a second degree misdemeanor.<sup>10</sup> The paid petition circulator must provide to the Secretary:

- His or her name, permanent address, temporary address, and date of birth.
- A Florida address where the circulator will accept service of process.
- A statement that the circulator consents to the jurisdiction of Florida courts.
- Any information required by the Secretary to verify the circulator's identity or address.<sup>11</sup>

In addition, a paid petition circulator must provide an affidavit with each petition form gathered. The affidavit must include the circulator's name and permanent address and a signed statement verifying, under penalties of perjury, that the petition was signed in the circulator's presence.<sup>12</sup>

The date when the elector signs the petition is presumed to be the date of collection.<sup>13</sup> The sponsor incurs a fine of \$50 for each petition form submitted to the supervisor more than 30 days after the elector signed the petition. The sponsor incurs a fine of \$500 for each petition form not submitted to the supervisor at all. If the sponsor acted willfully, the fines are raised to \$250 and \$1,000 per petition, respectively.<sup>14</sup> The sponsor can avoid fines if it shows that failure to deliver the petitions was due to *force majeure*<sup>15</sup> or impossibility of performance.<sup>16</sup> If the Secretary believes these provisions have been violated, the Secretary may refer the matter to the Attorney General for enforcement.<sup>17</sup>

The supervisor of elections or the Division of Elections (division) within the Department of State must provide printed petition forms to registered paid petition circulators.<sup>18</sup> The forms must contain information identifying the paid petition circulator.<sup>19</sup> The division must maintain a database of registered paid petition circulators and petition forms assigned to each, updating the database daily with respect to petition forms.<sup>20</sup> The supervisor must provide to the division information relating to petition forms assigned to and received from paid petition circulators.<sup>21</sup> When a sponsor delivers the collected signatures to the supervisor, the supervisor must check<sup>22</sup> each signature to ensure that the:

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<sup>9</sup> Section 100.371(3), F.S.

<sup>10</sup> Section 104.187, F.S. *See also* s. 104.186, F.S. (making it a first-degree misdemeanor to compensate a petition circulator based on the number of petitions gathered).

<sup>11</sup> Section 100.371(4), F.S.

<sup>12</sup> Section 100.371(5), F.S.

<sup>13</sup> Section 100.371(10), F.S.

<sup>14</sup> Section 100.371(7)(a), F.S.

<sup>15</sup> "*Force majeure*" refers to circumstances that cannot be foreseen or controlled, which prevent a person from completing a legal obligation. *See Black's Law Dictionary* 673 (8th ed. 2004).

<sup>16</sup> Section 100.371(7)(b), F.S.

<sup>17</sup> Section 100.371(8), F.S.

<sup>18</sup> Section 100.371(6), F.S.

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

<sup>20</sup> *Id.*

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

<sup>22</sup> The sponsor is required to pay the supervisor the sum of 10 cents per signature checked or the actual cost of checking the signatures, whichever is less. Section 99.097(4), F.S.

- Elector's original signature is recorded.
- Elector accurately recorded the date on which he or she signed the form.
- Elector is a qualified and registered Florida voter.
- Form on which the signature is recorded contains the elector's name, address, city, county, and voter registration number or date of birth.<sup>23</sup>

A petition form is invalid if any of these requirements is not met.<sup>24</sup> The supervisors submit their total numbers of valid signatures to the Secretary of State (Secretary).<sup>25</sup> Once a sponsor obtains verified signatures equal to 10 percent of the statewide requirement in at least 25 percent of Florida's congressional districts,<sup>26</sup> the Secretary must send the petition to the:

- Financial Impact Estimating Conference<sup>27</sup> to complete an analysis on the proposed amendment's fiscal impact within 75 days.<sup>28</sup>
- Attorney General, who in turn petitions the Florida Supreme Court for an advisory opinion as to whether:
  - The proposed amendment complies with the single-subject requirement; and
  - The ballot title and summary are clear, unambiguous, and otherwise comply with s. 101.161, F.S.<sup>29</sup>

### **Fiscal Impact Estimating Conference (FIEC)**

After it receives a proposed citizen initiative amendment from the Secretary, the FIEC estimates the proposal's projected impacts on the costs and revenues of state and local governments, the state and local economies, and the state budget. The FIEC must complete two documents: a financial impact statement and an initiative financial information statement.<sup>30</sup>

The financial impact statement is placed on the ballot to inform voters of the financial impacts the proposed amendment will have.<sup>31</sup> The supervisor must include a copy of the FIEC's financial information summaries in the publication or mailing for sample ballots.

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<sup>23</sup> Section 100.371(11), F.S.

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

<sup>25</sup> *Id.*

<sup>26</sup> Section 15.21(3), F.S. For the 2018 and 2020 elections, the number is 76,632 and must come from at least seven congressional districts. DOS, *Initiative Petition Handbook*.

<sup>27</sup> The Florida Constitution provides that the Legislature must provide by general law for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative. FLA. CONST. art. XI, s. 5(c). The legislature created the FIEC to review, analyze, and estimate the fiscal impact of constitutional amendments proposed by citizen initiative. It consists of four persons: one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research or a designee; one professional Senate staffer; and one professional House staffer. Section 100.371(13)(c)1., F.S.

<sup>28</sup> See s. 100.371(13), F.S. (providing for the 75-day timeframe, which is tolled when the Legislature is in session).

<sup>29</sup> *Advisory Opinion to the Attorney General Re: Citizenship Requirements to Vote in Florida Elections*, 2020 WL 238555 (Fla. 2020).

<sup>30</sup> Section 100.371(13), F.S.

<sup>31</sup> Section 100.371(13)(a), F.S.

In addition, if the financial impact statement estimates that the proposal will cause increased costs, decreased revenues, a negative impact on the economy, or an indeterminate fiscal impact, the ballot must include a statement indicating such effect in **bold font**.<sup>32</sup>

The Secretary of State and the Office of Economic and Demographic Research must place the lengthier initiative financial information statement on their respective websites.<sup>33</sup> Each supervisor must include in the publication and mailing of sample ballots the internet addresses where the FIEC's full information statements can be viewed and a summary of the statements.<sup>34</sup> The supervisors must also place a summary of the information statements at each polling place, at the main office of the supervisor, upon request, and on the supervisor's website.<sup>35</sup>

### **Ballot Placement and Passage**

If the Secretary determines that the sponsor has collected the required number of verified signatures by February 1 of the election year,<sup>36</sup> he or she assigns an amendment number and certifies the proposed amendment's ballot position.<sup>37</sup> When the proposal is printed on the ballot, the ballot must also include:

- A ballot summary not exceeding 75 words summarizing the proposal's purpose.
- A ballot title having a caption that does not exceed 15 words describing the proposal.
- The financial impact statement prepared by the FIEC.<sup>38</sup>

At the general election, if at least 60 percent of the voters voting on the proposed amendment vote yes,<sup>39</sup> the proposed amendment is incorporated into the Florida Constitution.<sup>40</sup> The amendment becomes effective on the first Tuesday after the first Monday in January following the election or on a different date if specified in the amendment.<sup>41</sup>

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

Regarding proposed citizen initiative amendments, the bill changes the deadline for gathering signatures, the Fiscal Impact Estimating Conference (FIEC) analysis process, the ballot language requirements, and the requirements for supervisors of elections. The bill also subjects every proposed amendment—not just those originating as citizen initiatives—to review by the FIEC.

#### **Petition Circulators and Petition Form Signatures**

The bill creates a cause of action in circuit court for citizens to challenge a petition circulator's registration, and requires the court to enjoin a respondent not in compliance from collecting signatures or initiative petitions for compensation until such person is lawfully registered.

<sup>32</sup> Section 100.371(13)(d), F.S.

<sup>33</sup> Section 100.371(13)(e)5., F.S.

<sup>34</sup> Sections 100.371(13)(e)5. and 101.20, F.S.

<sup>35</sup> Section 100.371(13)(e), F.S.

<sup>36</sup> FLA. CONST. art. XI, s. 5(b).

<sup>37</sup> Sections 100.371(12) and 101.161, F.S.

<sup>38</sup> Section 101.161(1), F.S.

<sup>39</sup> FLA. CONST. art. XI, s. 5(e).

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

<sup>41</sup> *Id.*

Further, the bill invalidates any illegally-obtained signature, including ones that are collected by paid petition circulators who were not validly registered at the time they collected the signature.

The bill also provides that a signature on a petition form is valid only until February 1 of the next even-numbered year instead of for two years from the date signed. This change ties the current two-year signature validity period to the Secretary's ballot designation deadline.

### **Analysis of the Projected Impacts of Proposed Amendments**

The bill changes the process for the Secretary of State to refer a proposed citizen initiative amendment for further analysis by increasing the number of verified signatures required to trigger the referral of a citizen initiative. Current law requires that the verified signatures equal 10 percent of the signatures required to place an initiative on the ballot. Moreover, the signatures must be comprised of at least 10 percent of the electors<sup>42</sup> in each of one-eighth of the congressional districts. The bill requires that the verified signatures equal 33 percent of the overall signatures required to place an initiative on the ballot. The bill also requires that this threshold be met in each of at least half of the state's congressional districts.

Once the threshold for referral is met, the bill requires the Secretary to refer the proposed citizen initiative amendment to the Senate President and House Speaker in addition to the Attorney General and the FIEC.

The Senate President and House Speaker are authorized by the bill to direct legislative staff to conduct an analysis of a citizen initiative proposal, which may include, but is not limited to, whether the proposal:

- Has undefined terms;
- Conflicts with an existing provision of the Florida Constitution; or,
- Will cause unintended consequences or economic impacts.

Finally, the bill requires the Attorney General, upon petitioning the Florida Supreme Court to review the legality of a proposed citizen initiative amendment, to ask the Court whether it is facially invalid under the United States Constitution.

### **All Amendments Subjected to (Modified) FIEC Review**

The bill subjects *all* proposed amendments<sup>43</sup> —not just those originating as citizen initiatives—to FIEC analysis, which the bill modifies. Particularly, the FIEC is no longer required to estimate the proposal's projected impacts on the state and local economies. The FIEC must still produce a financial impact statement estimating the proposal's:

- Effect on increasing or decreasing revenues or costs to state or local governments; and,
- Overall impact to the state budget.

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<sup>42</sup> For this purpose, the number of electors is the number that voted in the last presidential election.

<sup>43</sup> The other sources from which an amendment may originate are the Legislature, the Constitution Revision Commission, the Taxation and Budget Reform Commission, and a constitutional convention.

### **Ballot Requirements – Financial Impact Estimation**

As the bill subjects all proposed amendments to FIEC review, it also requires the ballot for any amendment to include a financial impact statement. Additionally, the ballot for any amendment requires a *specific* ballot statement in bold capital font indicating that the FIEC:

- Estimates that the proposal will have a net negative impact on the state budget;
- Cannot determine the proposal's financial impact due to ambiguities and uncertainties surrounding the amendment's impact;
- Is unable to reach a consensus on the proposal's financial impact; or
- Estimates that the proposal will have a positive impact on the state budget which may result in generating additional revenue.

If the first or third statement is included on the ballot, the statement must declare that the amendment “may result in higher taxes or a loss of government services in order to maintain a balanced State budget as required by the constitution.”

### **Supervisors of Elections**

The bill requires a supervisor of elections to:

- Verify signatures within 60 days after receipt of the petition forms and the required fees, instead of within 30 days as under current law.
- Provide a copy of the proposed amendment text in each in a designated area of each polling location as determined by the supervisor. The Department of State is required to print and furnish each supervisor with a sufficient number of copies of the amendment in either poster or booklet form.
- Charge the actual cost for checking a petition form, as opposed to charging the lesser of the actual cost or 10 cents per signature. But the Department of State must determine the actual per-signature cost, promulgate the cost by rule in the Florida Administrative Code, and update the cost determination annually.

The bill also gives a supervisor of elections the *option* to provide petition forms to a sponsor in PDF format instead of requiring that the supervisor print the forms. This effectively shifts the printing costs for petition forms to the sponsor instead of the supervisor.

### **Severability Clause and Effective Date**

The bill provides that if any provision contained within the bill is held invalid, the remaining portion of the bill, “to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

The bill is effective upon becoming a law, and its changes apply to all initiative amendments proposed for the 2020 ballot. However, nothing in the bill affects the validity of a:

- Petition form gathered before the effective date.
- Contract entered into before the effective date.

**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:

***Initiative Petition Sponsors/Paid-Petition Gatherers***

Allowing a supervisor to provide petition forms to initiative sponsors in PDF format instead of providing printed forms will likely increase a sponsor's printing costs. The costs are indeterminate at this time, and will vary from election-to-election and by county, based on the county's size and the number of initiatives/petitions involved.

Further, requiring initiative sponsors to remit to supervisors the *actual* cost of signature verification (in lieu of the current rule: the lesser of the actual cost or 10 cents per signature) may result in additional costs or additional savings to sponsors, depending on how efficient each county is at performing this task and the approach of the Department of State rule determining the actual costs.

## C. Government Sector Impact:

***State******Recurring Costs***

The court system is anticipated to incur additional costs for proceedings challenging a petition circulator's registration status and Supreme Court proceedings to determine

whether a proposed amendment facially invalid under the U.S. Constitution.<sup>44</sup> Additionally, as the bill requires the FIEC to review of all proposed constitutional amendments, the costs associated with the reviews might increase.

*Recurring Savings*

The bill provides an indeterminate positive impact on state government by limiting the FIEC's role in analyzing a proposed amendment and delaying formal review of the proposed initiative until the collection of additional verified signatures.

*Local*

*Recurring Savings*

Allowing a county supervisor of elections the option to provide petition forms to initiative sponsors in PDF format instead of requiring that the supervisor print the forms could reduce a supervisors printing costs. The cost savings is indeterminate at this time, and will vary from election-to-election and by county.

*Recurring Costs*

The additional ballot statements that the bill mandates with respect to proposed amendments could lengthen the ballot, resulting in greater printing costs. As this situation will vary from county-to-county, the cost is indeterminate at this time.

*Recurring Savings/Costs*

Requiring initiative petition sponsors to remit to supervisors the actual cost of signature verification (in lieu of the current rule: the lesser of the actual cost or 10 cents per signature) may result in additional costs or additional savings, depending on how efficient each county is at performing this task and the approach of the Department of State rule governing the actual costs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 15.21, 16.061, 100.371, 101.161, and 101.171. The bill also creates section 101.162, Florida Statutes.

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<sup>44</sup> See Office of the State Courts Administrator, *2020 Judicial Impact Statement for SB 1794*, Jan. 26, 2020 (analyzing the original version of the bill).

**IX. Additional Information:**

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

**CS/CS/CS by Rules on February 26, 2020:**

The committee substitute differs from the original bill by:

- Increasing the geographic diversity requirement that triggers Supreme Court initiative petition review, from 33% of the required signatures in one-third of the State’s congressional districts to one-half of the districts.
- Removing the \$1 per signature cap on the actual costs of signature verification reimbursement.

**CS/CS by Judiciary on February 11, 2020:**

The committee substitute changes the underlying bill by:

- Decreasing the overall number of signatures that a citizen initiative must receive to trigger a review by the Supreme Court and the FIEC, but requiring that more congressional districts each meet a certain threshold in order to trigger the review;
- Capping the fee that can be charged to verify a citizen initiative petition at \$1;
- Requiring the ballot to state, when applicable, that the FIEC expects an amendment to have a positive net impact on the state budget;
- Removing the requirement that a copy of a proposed constitutional amendment be placed in each voting booth;
- Removing the requirement that a political committee supporting a citizen initiative report the percentage of its total contributions from in-state persons;
- Removing the requirement that a ballot include the name of a citizen initiative’s sponsor, the percentage of contributions received from in-state persons, and whether out-of-state petition circulators were used;
- Subjecting all proposed amendments to the same FIEC review that is required of only citizen initiative amendments in the underlying bill; and
- Requiring the ballot on which any amendment appears to include the financial impact statement currently required for citizen initiative amendments.

**CS by Ethics and Elections on January 27, 2020:**

The CS adopts verbatim HB 7037, *sans* some technical changes. Substantively, the CS is very similar to the original bill with the following major differences:

- Restores current law requiring the Florida Impact Estimating Conference (FIEC) to consider impacts on *local* governments when drafting the financial impact statement, as opposed to *State-only* impacts.
- Pares back the additional Supreme Court review authority that the original SB granted, expanding current law to include *only* an additional facial *federal* constitutional review.

- B. **Amendments:**

None.

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

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763622

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/27/2020	.	
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The Committee on Rules (Rodriguez) recommended the following:

**Senate Amendment (with title amendment)**

Before line 66

insert:

Section 1. This act may be cited as the "Direct Democracy  
Limitation Act."

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

And the title is amended as follows:

Delete line 2

and insert:



763622

12  
13

An act relating to constitutional amendments;  
providing a short title; amending



258150

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2020	.	
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The Committee on Rules (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 83 - 85  
and insert:  
electors statewide required by s. 3, Art. XI of the State  
Constitution ~~and in one-half at least one-fourth of the  
congressional districts of the state required by s. 3, Art. XI  
of the State Constitution.~~

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

And the title is amended as follows:



258150

12           Delete line 6  
13 and insert:  
14           verified; increasing the signature threshold at which  
15           the Secretary of State must transmit initiative  
16           petitions to the Attorney General and the Legislature  
17           for review; amending s. 16.061, F.S.; requiring the



640730

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2020	.	
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The Committee on Rules (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 143 - 144  
and insert:  
this subsection and shall update the cost annually.

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

And the title is amended as follows:

Delete lines 20 - 21  
and insert:  
Department of State to adopt certain rules;



641890

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/27/2020	.	
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The Committee on Rules (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 248 - 538  
and insert:

2. If the financial impact statement estimates an indeterminate financial impact, the ballot must include the statement required by s. 101.161(1)(c).

3. If the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, the ballot must include the statement required by s. 101.161(1)(d).



12 (e)1. Any financial impact statement that the Supreme Court  
13 finds not to be in accordance with this subsection shall be  
14 remanded solely to the Financial Impact Estimating Conference  
15 for redrafting, provided the court's advisory opinion is  
16 rendered at least 75 days before the election at which the  
17 question of ratifying the amendment will be presented. The  
18 Financial Impact Estimating Conference shall prepare and adopt a  
19 revised financial impact statement no later than 5 p.m. on the  
20 15th day after the date of the court's opinion.

21 2. If, by 5 p.m. on the 75th day before the election, the  
22 Supreme Court has not issued an advisory opinion on the initial  
23 financial impact statement prepared by the Financial Impact  
24 Estimating Conference for an initiative amendment that otherwise  
25 meets the legal requirements for ballot placement, the financial  
26 impact statement shall be deemed approved for placement on the  
27 ballot.

28 3. In addition to the financial impact statement required  
29 by this subsection, the Financial Impact Estimating Conference  
30 shall draft an initiative financial information statement. The  
31 initiative financial information statement should describe in  
32 greater detail than the financial impact statement any projected  
33 increase or decrease in revenues or costs that the state or  
34 local governments would likely experience ~~and the estimated~~  
35 ~~economic impact on the state and local economy~~ if the ballot  
36 measure were approved. If appropriate, the initiative financial  
37 information statement may include both estimated dollar amounts  
38 and a description placing the estimated dollar amounts into  
39 context. The initiative financial information statement must  
40 include both a summary of not more than 500 words and additional



641890

41 detailed information that includes the assumptions that were  
42 made to develop the financial impacts, workpapers, and any other  
43 information deemed relevant by the Financial Impact Estimating  
44 Conference.

45 4. The Department of State shall have printed, and shall  
46 furnish to each supervisor of elections, a copy of the summary  
47 from the initiative financial information statements. The  
48 supervisors shall have the summary from the initiative financial  
49 information statements available at each polling place and at  
50 the main office of the supervisor of elections upon request.

51 5. The Secretary of State and the Office of Economic and  
52 Demographic Research shall make available on the Internet each  
53 initiative financial information statement in its entirety. In  
54 addition, each supervisor of elections whose office has a  
55 website shall post the summary from each initiative financial  
56 information statement on the website. Each supervisor shall  
57 include a copy of each summary from the initiative financial  
58 information statements and the Internet addresses for the  
59 information statements on the Secretary of State's and the  
60 Office of Economic and Demographic Research's websites in the  
61 publication or mailing required by s. 101.20.

62 (f) When the Secretary of State submits a proposed  
63 initiative petition to the President of the Senate and the  
64 Speaker of the House of Representatives pursuant to s. 15.21,  
65 the President of the Senate and the Speaker of the House of  
66 Representatives may direct legislative staff to prepare an  
67 analysis of the petition. Such analysis may include, but is not  
68 limited to, whether the amendment has undefined terms, conflicts  
69 with an existing provision of the State Constitution, or will



641890

70 cause unintended consequences or economic impacts.

71 Section 4. Subsection (1) of section 101.161, Florida  
72 Statutes, is amended to read:

73 101.161 Referenda; ballots.—

74 (1) Whenever a constitutional amendment or other public  
75 measure is submitted to the vote of the people, a ballot summary  
76 of such amendment or other public measure shall be printed in  
77 clear and unambiguous language on the ballot after the list of  
78 candidates, followed by the word "yes" and also by the word  
79 "no," and shall be styled in such a manner that a "yes" vote  
80 will indicate approval of the proposal and a "no" vote will  
81 indicate rejection. The ballot summary of the amendment or other  
82 public measure and the ballot title to appear on the ballot  
83 shall be embodied in the constitutional revision commission  
84 proposal, constitutional convention proposal, taxation and  
85 budget reform commission proposal, or enabling resolution or  
86 ordinance. The ballot summary of the amendment or other public  
87 measure shall be an explanatory statement, not exceeding 75  
88 words in length, of the chief purpose of the measure. In  
89 addition, for every constitutional amendment proposed by  
90 initiative, the ballot shall include, following the ballot  
91 summary, in the following order:

92 (a) A separate financial impact statement concerning the  
93 measure prepared by the Financial Impact Estimating Conference  
94 in accordance with s. 100.371(13) ~~s. 100.371(5)~~.

95 (b) If the financial impact statement projects a net  
96 negative impact on the state budget, the following statement in  
97 bold print:

98



641890

99           THIS PROPOSED CONSTITUTIONAL AMENDMENT IS ESTIMATED TO  
100           HAVE A NET NEGATIVE IMPACT ON THE STATE BUDGET. THIS  
101           IMPACT MAY RESULT IN HIGHER TAXES OR A LOSS OF  
102           GOVERNMENT SERVICES IN ORDER TO MAINTAIN A BALANCED  
103           STATE BUDGET AS REQUIRED BY THE CONSTITUTION.

104  
105           (c) If the financial impact statement is indeterminate, the  
106 following statement in bold print:

107  
108           THE FINANCIAL IMPACT OF THIS AMENDMENT CANNOT BE  
109           DETERMINED DUE TO AMBIGUITIES AND UNCERTAINTIES  
110           SURROUNDING THE AMENDMENT'S IMPACT.

111  
112           (d) If the members of the Financial Impact Estimating  
113 Conference are unable to agree on the financial impact  
114 statement, the following statement in bold print:

115  
116           THE FINANCIAL IMPACT ESTIMATING CONFERENCE WAS UNABLE  
117           TO AGREE ON THE FINANCIAL IMPACT OF THIS PROPOSED  
118           CONSTITUTIONAL AMENDMENT. THIS AMENDMENT MAY RESULT IN  
119           HIGHER TAXES OR A LOSS OF GOVERNMENT SERVICES IN ORDER  
120           TO MAINTAIN A BALANCED STATE BUDGET AS REQUIRED BY THE  
121           CONSTITUTION.

122  
123 The ballot title shall consist of a caption, not exceeding 15  
124 words in length, by which the measure is commonly referred to or  
125 spoken of. This subsection does not apply to constitutional  
126 amendments or revisions proposed by joint resolution.

127           Section 5. Section 101.171, Florida Statutes, is amended to



641890

128 read:

129 101.171 Copy of constitutional amendment to be available at  
130 voting locations.—Whenever any amendment to the State  
131 Constitution is to be voted upon at any election, the Department  
132 of State shall have printed and shall furnish to each supervisor  
133 of elections a sufficient number of copies of the amendment  
134 either in poster or booklet form, and the supervisor shall  
135 provide ~~have~~ a copy in a designated area of each polling  
136 location as determined by the supervisor ~~thereof conspicuously~~  
137 ~~posted or available at each polling room or early voting area~~  
138 ~~upon the day of election.~~

139 Section 6. The provisions of this act apply to revisions or  
140 amendments to the State Constitution proposed by initiative  
141 which are proposed for the

142  
143 ===== T I T L E A M E N D M E N T =====

144 And the title is amended as follows:

145 Delete lines 34 - 58

146 and insert:

147 constitutional amendments proposed by initiative  
148 include certain disclosures and statements, in a  
149 specified order; amending s.



283462

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/27/2020	.	
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The Committee on Rules (Hutson) recommended the following:

**Senate Amendment to Amendment (641890)**

Delete line 139  
and insert:

Section 6. This act does not require the Financial Impact Estimating Conference to amend or revise a financial impact statement that has been submitted to the Secretary of State before the effective date of this act. The provisions of this act, including the ballot requirements for certain disclosures and statements, apply to revisions or

By the Committees on Judiciary; and Ethics and Elections; and  
Senator Hutson

590-03497-20

20201794c2

1 A bill to be entitled  
2 An act relating to constitutional amendments; amending  
3 s. 15.21, F.S.; requiring the Secretary of State to  
4 submit an initiative petition to the Legislature when  
5 a certain amount of signatures are obtained and  
6 verified; amending s. 16.061, F.S.; requiring the  
7 Attorney General to request the Supreme Court to  
8 address in an advisory opinion the facial validity of  
9 the proposed amendment under the United States  
10 Constitution; amending s. 100.371, F.S.; providing  
11 that a citizen may challenge in circuit court a  
12 petition circulator's registration with the Secretary  
13 of State; authorizing the Division of Elections or a  
14 supervisor of elections to provide petition forms in a  
15 certain electronic format; revising the length of time  
16 that a signature on a petition form is valid; revising  
17 the timeframe within which the supervisor must verify  
18 petition forms; requiring the supervisor to charge the  
19 actual cost of verifying petition forms; requiring the  
20 Department of State to adopt certain rules; providing  
21 a limitation on the cost of signature verification;  
22 revising the circumstances under which a petition form  
23 is deemed valid; requiring the Secretary of State to  
24 submit a copy of an initiative petition to the  
25 Financial Impact Estimating Conference; revising  
26 requirements for the Financial Impact Estimating  
27 Conference's analysis of a proposed initiative's  
28 economic impact; requiring certain ballot language  
29 based on the findings of the Financial Impact

Page 1 of 19

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

590-03497-20

20201794c2

30 Estimating Conference; authorizing the use of  
31 legislative staff to analyze the effects of a citizen  
32 initiative under certain circumstances; amending s.  
33 101.161, F.S.; requiring that ballots containing  
34 constitutional amendments include certain disclosures  
35 and statements, in a specified order; conforming  
36 provisions to changes made by the act; creating s.  
37 101.162, F.S.; requiring the Secretary of State to  
38 submit constitutional amendments or revisions proposed  
39 by specified means to the Financial Impact Estimating  
40 Conference; requiring the Financial Impact Estimating  
41 Conference to complete an analysis of the amendment or  
42 revision within a specified timeframe; requiring the  
43 Financial Impact Estimating Conference to submit the  
44 completed financial impact statement to the Secretary  
45 of State and the Attorney General; requiring the  
46 coordinator of the Office of Economic and Demographic  
47 Research to provide certain notification to interested  
48 parties; prescribing requirements and responsibilities  
49 of the Financial Impact Estimating Conference;  
50 specifying timeframes and procedures for challenges  
51 and redrafting of financial impact statements;  
52 prescribing the form of the financial impact  
53 statement; requiring the Financial Impact Estimating  
54 Conference to draft a financial information statement;  
55 specifying requirements for such statements; requiring  
56 that financial information statements be made  
57 available at specified locations and posted on the  
58 Internet; providing applicability; amending s.

Page 2 of 19

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

590-03497-20

20201794c2

59 101.171, F.S.; revising requirements regarding the  
60 availability of copies of constitutional amendments at  
61 polling locations; providing applicability; providing  
62 for severability; providing an effective date.

63  
64 Be It Enacted by the Legislature of the State of Florida:

65  
66 Section 1. Section 15.21, Florida Statutes, is amended to  
67 read:

68 15.21 Initiative petitions; s. 3, Art. XI, State  
69 Constitution.—The Secretary of State shall immediately submit an  
70 initiative petition to the Attorney General, the President of  
71 the Senate, and the Speaker of the House of Representatives and  
72 to the Financial Impact Estimating Conference if the sponsor  
73 has:

74 (1) Registered as a political committee pursuant to s.  
75 106.03;

76 (2) Submitted the ballot title, substance, and text of the  
77 proposed revision or amendment to the Secretary of State  
78 pursuant to ss. 100.371 and 101.161; and

79 (3) Obtained a letter from the Division of Elections  
80 confirming that the sponsor has submitted to the appropriate  
81 supervisors for verification, and the supervisors have verified,  
82 forms signed and dated equal to 33 ~~40~~ percent of the number of  
83 electors statewide and in at least two-thirds ~~one-fourth~~ of the  
84 congressional districts required by s. 3, Art. XI of the State  
85 Constitution.

86 Section 2. Subsection (1) of section 16.061, Florida  
87 Statutes, is amended to read:

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88 16.061 Initiative petitions.—

89 (1) The Attorney General shall, within 30 days after  
90 receipt of a proposed revision or amendment to the State  
91 Constitution by initiative petition from the Secretary of State,  
92 petition the Supreme Court, requesting an advisory opinion  
93 regarding the compliance of the text of the proposed amendment  
94 or revision with s. 3, Art. XI of the State Constitution,  
95 whether the proposed amendment is facially invalid under the  
96 United States Constitution, and the compliance of the proposed  
97 ballot title and substance with s. 101.161. The petition may  
98 enumerate any specific factual issues that the Attorney General  
99 believes would require a judicial determination.

100 Section 3. Subsections (3), (6), (11), and (13) of section  
101 100.371, Florida Statutes, are amended to read:

102 100.371 Initiatives; procedure for placement on ballot.—

103 (3) (a) A person may not collect signatures or initiative  
104 petitions for compensation unless the person is registered as a  
105 petition circulator with the Secretary of State.

106 (b) A citizen may challenge a petition circulator's  
107 registration under this section by filing a petition in circuit  
108 court. If the court finds that the respondent is not a  
109 registered petition circulator, the court may enjoin the  
110 respondent from collecting signatures or initiative petitions  
111 for compensation until she or he is lawfully registered.

112 (6) The division or the supervisor of elections shall make  
113 hard copy petition forms or electronic portable document format  
114 petition forms available to registered petition circulators. All  
115 such forms must contain information identifying the petition  
116 circulator to which the forms are provided. The division shall

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117 maintain a database of all registered petition circulators and  
 118 the petition forms assigned to each. Each supervisor of  
 119 elections shall provide to the division information on petition  
 120 forms assigned to and received from petition circulators. The  
 121 information must be provided in a format and at times as  
 122 required by the division by rule. The division must update  
 123 information on petition forms daily and make the information  
 124 publicly available.

125 (11) An initiative petition form circulated for signature  
 126 may not be bundled with or attached to any other petition. Each  
 127 signature shall be dated when made and shall be valid until the  
 128 next February 1 occurring in an even-numbered year for the  
 129 purpose of the amendment appearing on the ballot for the general  
 130 election occurring in that same year for a period of 2 years  
 131 following such date, provided all other requirements of law are  
 132 met. The sponsor shall submit signed and dated forms to the  
 133 supervisor of elections for the county of residence listed by  
 134 the person signing the form for verification of the number of  
 135 valid signatures obtained. If a signature on a petition is from  
 136 a registered voter in another county, the supervisor shall  
 137 notify the petition sponsor of the misfiled petition. The  
 138 supervisor shall promptly verify the signatures within ~~60~~ 30  
 139 days after receipt of the petition forms and payment of ~~a~~ the  
 140 fee for the actual cost of signature verification incurred by  
 141 the supervisor required by s. 99.097. The Department of State  
 142 shall adopt rules to set the cost to verify a petition under  
 143 this subsection and shall update the cost annually; however, the  
 144 actual cost to verify a petition may not exceed \$1 per petition.  
 145 The supervisor shall promptly record, in the manner prescribed

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146 by the Secretary of State, the date each form is received by the  
 147 supervisor, and the date the signature on the form is verified  
 148 as valid. The supervisor may verify that the signature on a form  
 149 is valid only if:

150 (a) The form contains the original signature of the  
 151 purported elector.

152 (b) The purported elector has accurately recorded on the  
 153 form the date on which he or she signed the form.

154 (c) The form sets forth the purported elector's name,  
 155 address, city, county, and voter registration number or date of  
 156 birth.

157 (d) The purported elector is, at the time he or she signs  
 158 the form and at the time the form is verified, a duly qualified  
 159 and registered elector in the state.

160 (e) The signature was obtained legally, including that if a  
 161 paid petition circulator was used, the circulator was validly  
 162 registered under subsection (3) when the signature was obtained.

163 The supervisor shall retain the signature forms for at least 1  
 164 year following the election in which the issue appeared on the  
 165 ballot or until the Division of Elections notifies the  
 166 supervisors of elections that the committee that circulated the  
 167 petition is no longer seeking to obtain ballot position.

168 (13) (a) At the same time the Secretary of State submits an  
 169 initiative petition to the Attorney General, the President of  
 170 the Senate, and the Speaker of the House of Representatives  
 171 pursuant to s. 15.21, the secretary shall submit a copy of the  
 172 initiative petition to the Financial Impact Estimating  
 173 Conference. Within 75 days after receipt of a proposed revision  
 174

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175 or amendment to the State Constitution by initiative petition  
 176 from the Secretary of State, the Financial Impact Estimating  
 177 Conference shall complete an analysis and financial impact  
 178 statement to be placed on the ballot of the estimated increase  
 179 or decrease in any revenues or costs to state or local  
 180 governments, ~~estimated economic impact on the state and local~~  
 181 ~~economy~~, and the overall impact to the state budget resulting  
 182 from the proposed initiative. The 75-day time limit is tolled  
 183 when the Legislature is in session. The Financial Impact  
 184 Estimating Conference shall submit the financial impact  
 185 statement to the Attorney General and Secretary of State.

186 (b) Immediately upon receipt of a proposed revision or  
 187 amendment from the Secretary of State, the coordinator of the  
 188 Office of Economic and Demographic Research shall contact the  
 189 person identified as the sponsor to request an official list of  
 190 all persons authorized to speak on behalf of the named sponsor  
 191 and, if there is one, the sponsoring organization at meetings  
 192 held by the Financial Impact Estimating Conference. All other  
 193 persons shall be deemed interested parties or proponents or  
 194 opponents of the initiative. The Financial Impact Estimating  
 195 Conference shall provide an opportunity for any representatives  
 196 of the sponsor, interested parties, proponents, or opponents of  
 197 the initiative to submit information and may solicit information  
 198 or analysis from any other entities or agencies, including the  
 199 Office of Economic and Demographic Research.

200 (c) All meetings of the Financial Impact Estimating  
 201 Conference shall be open to the public. The President of the  
 202 Senate and the Speaker of the House of Representatives, jointly,  
 203 shall be the sole judge for the interpretation, implementation,

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204 and enforcement of this subsection.

205 1. The Financial Impact Estimating Conference is  
 206 established to review, analyze, and estimate the financial  
 207 impact of amendments to or revisions of the State Constitution  
 208 proposed by initiative. The Financial Impact Estimating  
 209 Conference shall consist of four principals: one person from the  
 210 Executive Office of the Governor; the coordinator of the Office  
 211 of Economic and Demographic Research, or his or her designee;  
 212 one person from the professional staff of the Senate; and one  
 213 person from the professional staff of the House of  
 214 Representatives. Each principal shall have appropriate fiscal  
 215 expertise in the subject matter of the initiative. A Financial  
 216 Impact Estimating Conference may be appointed for each  
 217 initiative.

218 2. Principals of the Financial Impact Estimating Conference  
 219 shall reach a consensus or majority concurrence on a clear and  
 220 unambiguous financial impact statement, no more than 150 words  
 221 in length, and immediately submit the statement to the Attorney  
 222 General. Nothing in this subsection prohibits the Financial  
 223 Impact Estimating Conference from setting forth a range of  
 224 potential impacts in the financial impact statement. Any  
 225 financial impact statement that a court finds not to be in  
 226 accordance with this section shall be remanded solely to the  
 227 Financial Impact Estimating Conference for redrafting. The  
 228 Financial Impact Estimating Conference shall redraft the  
 229 financial impact statement within 15 days.

230 3. If ~~the members of the Financial Impact Estimating~~  
 231 ~~Conference are unable to agree on the statement required by this~~  
 232 ~~subsection, or if the Supreme Court has rejected the initial~~

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233 submission by the Financial Impact Estimating Conference and no  
 234 redraft has been approved by the Supreme Court by 5 p.m. on the  
 235 75th day before the election, the following statement shall  
 236 appear on the ballot ~~pursuant to s. 101.161(1)~~: "The financial  
 237 impact of this measure, if any, has not been ~~cannot be~~  
 238 ~~reasonably~~ determined at this time."

239 (d) The financial impact statement must be separately  
 240 contained and be set forth after the ballot summary as required  
 241 in s. 101.161(1).

242 1. If the financial impact statement projects a net  
 243 estimates increased costs, decreased revenues, a negative impact  
 244 on the state budget or local economy, or an indeterminate impact  
 245 for any of these areas, the ballot must include the a statement  
 246 required by s. 101.161(1)(b) indicating such estimated effect in  
 247 bold font.

248 2. If the financial impact statement projects a net  
 249 positive impact on the state budget, the ballot must include the  
 250 statement required by s. 101.161(1)(c).

251 3. If the financial impact statement estimates an  
 252 indeterminate financial impact, the ballot must include the  
 253 statement required by s. 101.161(1)(d).

254 4. If the members of the Financial Impact Estimating  
 255 Conference are unable to agree on the statement required by this  
 256 subsection, the ballot must include the statement required by s.  
 257 101.161(1)(e).

258 (e)1. Any financial impact statement that the Supreme Court  
 259 finds not to be in accordance with this subsection shall be  
 260 remanded solely to the Financial Impact Estimating Conference  
 261 for redrafting, provided the court's advisory opinion is

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262 rendered at least 75 days before the election at which the  
 263 question of ratifying the amendment will be presented. The  
 264 Financial Impact Estimating Conference shall prepare and adopt a  
 265 revised financial impact statement no later than 5 p.m. on the  
 266 15th day after the date of the court's opinion.

267 2. If, by 5 p.m. on the 75th day before the election, the  
 268 Supreme Court has not issued an advisory opinion on the initial  
 269 financial impact statement prepared by the Financial Impact  
 270 Estimating Conference for an initiative amendment that otherwise  
 271 meets the legal requirements for ballot placement, the financial  
 272 impact statement shall be deemed approved for placement on the  
 273 ballot.

274 3. In addition to the financial impact statement required  
 275 by this subsection, the Financial Impact Estimating Conference  
 276 shall draft an initiative financial information statement. The  
 277 initiative financial information statement should describe in  
 278 greater detail than the financial impact statement any projected  
 279 increase or decrease in revenues or costs that the state or  
 280 local governments would likely experience ~~and the estimated~~  
 281 ~~economic impact on the state and local economy~~ if the ballot  
 282 measure were approved. If appropriate, the initiative financial  
 283 information statement may include both estimated dollar amounts  
 284 and a description placing the estimated dollar amounts into  
 285 context. The initiative financial information statement must  
 286 include both a summary of not more than 500 words and additional  
 287 detailed information that includes the assumptions that were  
 288 made to develop the financial impacts, workpapers, and any other  
 289 information deemed relevant by the Financial Impact Estimating  
 290 Conference.

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291 4. The Department of State shall have printed, and shall  
 292 furnish to each supervisor of elections, a copy of the summary  
 293 from the initiative financial information statements. The  
 294 supervisors shall have the summary from the initiative financial  
 295 information statements available at each polling place and at  
 296 the main office of the supervisor of elections upon request.

297 5. The Secretary of State and the Office of Economic and  
 298 Demographic Research shall make available on the Internet each  
 299 initiative financial information statement in its entirety. In  
 300 addition, each supervisor of elections whose office has a  
 301 website shall post the summary from each initiative financial  
 302 information statement on the website. Each supervisor shall  
 303 include a copy of each summary from the initiative financial  
 304 information statements and the Internet addresses for the  
 305 information statements on the Secretary of State's and the  
 306 Office of Economic and Demographic Research's websites in the  
 307 publication or mailing required by s. 101.20.

308 (f) When the Secretary of State submits a proposed  
 309 initiative petition to the President of the Senate and the  
 310 Speaker of the House of Representatives pursuant to s. 15.21,  
 311 the President of the Senate and the Speaker of the House of  
 312 Representatives may direct legislative staff to prepare an  
 313 analysis of the petition. Such analysis may include, but is not  
 314 limited to, whether the amendment has undefined terms, conflicts  
 315 with an existing provision of the State Constitution, or will  
 316 cause unintended consequences or economic impacts.

317 Section 4. Subsection (1) and paragraph (a) of subsection  
 318 (3) of section 101.161, Florida Statutes, are amended to read:  
 319 101.161 Referenda; ballots.—

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320 (1) Whenever a constitutional amendment or other public  
 321 measure is submitted to the vote of the people, a ballot summary  
 322 of such amendment or other public measure shall be printed in  
 323 clear and unambiguous language on the ballot after the list of  
 324 candidates, followed by the word "yes" and also by the word  
 325 "no," and shall be styled in such a manner that a "yes" vote  
 326 will indicate approval of the proposal and a "no" vote will  
 327 indicate rejection. The ballot summary of the amendment or other  
 328 public measure and the ballot title to appear on the ballot  
 329 shall be embodied in the constitutional revision commission  
 330 proposal, constitutional convention proposal, taxation and  
 331 budget reform commission proposal, or enabling resolution or  
 332 ordinance. The ballot summary of the amendment or other public  
 333 measure shall be an explanatory statement, not exceeding 75  
 334 words in length, of the chief purpose of the measure. In  
 335 addition, for every constitutional amendment ~~proposed by~~  
 336 ~~initiative~~, the ballot shall include, following the ballot  
 337 summary, in the following order:

338 (a) A separate financial impact statement concerning the  
 339 measure prepared by the Financial Impact Estimating Conference  
 340 in accordance with s. 100.371(13) or s. 101.162, as applicable  
 341 s. 100.371(5).

342 (b) If the financial impact statement projects a net  
 343 negative impact on the state budget, the following statement in  
 344 bold print:

345  
 346 THIS PROPOSED CONSTITUTIONAL AMENDMENT IS ESTIMATED TO  
 347 HAVE A NET NEGATIVE IMPACT ON THE STATE BUDGET. THIS  
 348 IMPACT MAY RESULT IN HIGHER TAXES OR A LOSS OF

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349 GOVERNMENT SERVICES IN ORDER TO MAINTAIN A BALANCED  
 350 STATE BUDGET AS REQUIRED BY THE CONSTITUTION.

351 (c) If the financial impact statement projects a net  
 352 positive impact on the state budget, the following statement in  
 353 bold print:

354 THIS PROPOSED CONSTITUTIONAL AMENDMENT IS ESTIMATED TO  
 355 HAVE A NET POSITIVE IMPACT ON THE STATE BUDGET. THIS  
 356 IMPACT MAY RESULT IN GENERATING ADDITIONAL REVENUE.

357 (d) If the financial impact statement is indeterminate, the  
 358 following statement in bold print:

359 THE FINANCIAL IMPACT OF THIS AMENDMENT CANNOT BE  
 360 DETERMINED DUE TO AMBIGUITIES AND UNCERTAINTIES  
 361 SURROUNDING THE AMENDMENT'S IMPACT.

362 (e) If the members of the Financial Impact Estimating  
 363 Conference are unable to agree on the financial impact  
 364 statement, the following statement in bold print:

365 THE FINANCIAL IMPACT ESTIMATING CONFERENCE WAS UNABLE  
 366 TO AGREE ON THE FINANCIAL IMPACT OF THIS PROPOSED  
 367 CONSTITUTIONAL AMENDMENT. THIS AMENDMENT MAY RESULT IN  
 368 HIGHER TAXES OR A LOSS OF GOVERNMENT SERVICES IN ORDER  
 369 TO MAINTAIN A BALANCED STATE BUDGET AS REQUIRED BY THE  
 370 CONSTITUTION.

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378 The ballot title shall consist of a caption, not exceeding 15  
 379 words in length, by which the measure is commonly referred to or  
 380 spoken of. Except as otherwise specifically provided in  
 381 paragraph (3) (a), this subsection does not apply to  
 382 constitutional amendments or revisions proposed by joint  
 383 resolution.

384 (3) (a) Each joint resolution that proposes a constitutional  
 385 amendment or revision shall include one or more ballot  
 386 statements set forth in order of priority. Each ballot statement  
 387 shall consist of a ballot title, by which the measure is  
 388 commonly referred to or spoken of, not exceeding 15 words in  
 389 length, and a ballot summary that describes the chief purpose of  
 390 the amendment or revision in clear and unambiguous language. If  
 391 a joint resolution that proposes a constitutional amendment or  
 392 revision contains only one ballot statement, the ballot summary  
 393 may not exceed 75 words in length. If a joint resolution that  
 394 proposes a constitutional amendment or revision contains more  
 395 than one ballot statement, the first ballot summary, in order of  
 396 priority, may not exceed 75 words in length. In addition, a  
 397 constitutional amendment or revision proposed by joint  
 398 resolution must include a financial impact statement following  
 399 the ballot summary when appearing on the ballot in accordance  
 400 with paragraphs (1) (a)-(e).

401 Section 5. Section 101.162, Florida Statutes, is created to  
 402 read:

403 101.162 Financial impact statements.—

404 (1) Upon filing or certification of a constitutional  
 405 amendment or revision with the Department of State, the  
 406 Secretary of State shall transmit the amendment or revision

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407 proposed by joint resolution, the Constitution Revision  
 408 Commission, the Taxation and Budget Reform Commission, or  
 409 constitutional convention to the Financial Impact Estimating  
 410 Conference. Within 75 days after receipt of a proposed revision  
 411 or amendment to the State Constitution from the Secretary of  
 412 State, the Financial Impact Estimating Conference shall complete  
 413 an analysis and financial impact statement to be placed on the  
 414 ballot of the estimated increase or decrease in any revenues or  
 415 costs to state or local governments and the overall impact to  
 416 the state budget resulting from the amendment or revision. The  
 417 75-day time limit is tolled when the Legislature is in session.  
 418 The Financial Impact Estimating Conference shall submit the  
 419 financial impact statement to the Attorney General and Secretary  
 420 of State.

421 (2) Immediately upon receipt of a proposed amendment or  
 422 revision from the Secretary of State, the coordinator of the  
 423 Office of Economic and Demographic Research may notify any  
 424 interested parties or proponents or opponents of the amendment  
 425 or revision. The Financial Impact Estimating Conference shall  
 426 provide an opportunity for any interested parties or proponents  
 427 or opponents of the amendment or revision to submit information  
 428 and may solicit information or analysis from any other entities  
 429 or agencies, including the Office of Economic and Demographic  
 430 Research.

431 (3) All meetings of the Financial Impact Estimating  
 432 Conference shall be open to the public. The President of the  
 433 Senate and the Speaker of the House of Representatives, jointly,  
 434 shall be the sole judge for the interpretation, implementation,  
 435 and enforcement of this section.

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436 (a) The Financial Impact Estimating Conference, established  
 437 under s. 100.371(13), shall review, analyze, and estimate the  
 438 financial impact of amendments to or revisions of the State  
 439 Constitution proposed by joint resolution, the Constitution  
 440 Revision Commission, the Taxation and Budget Reform Commission,  
 441 or constitutional convention.

442 (b) Principals of the Financial Impact Estimating  
 443 Conference shall reach a consensus or majority concurrence on a  
 444 clear and unambiguous financial impact statement, no more than  
 445 150 words in length, and immediately submit the statement to the  
 446 Attorney General. Nothing in this section prohibits the  
 447 Financial Impact Estimating Conference from setting forth a  
 448 range of potential impacts in the financial impact statement.  
 449 Any financial impact statement that a court finds not to be in  
 450 accordance with this section shall be remanded solely to the  
 451 Financial Impact Estimating Conference for redrafting. The  
 452 Financial Impact Estimating Conference shall redraft the  
 453 financial impact statement within 15 days.

454 (c) If the Supreme Court has rejected the initial  
 455 submission by the Financial Impact Estimating Conference and no  
 456 redraft has been approved by the Supreme Court by 5 p.m. on the  
 457 75th day before the election, the following statement shall  
 458 appear on the ballot: "The impact of this measure, if any,  
 459 cannot be reasonably determined at this time."

460 (4) The financial impact statement must be separately  
 461 contained and be set forth after the ballot summary as required  
 462 in s. 101.161(1).

463 (a) If the financial impact statement projects a net  
 464 negative impact on the state budget, the ballot must include the

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465 statement required by s. 101.161(1)(b).

466 (b) If the financial impact statement projects a net  
 467 positive impact on the state budget, the ballot must include the  
 468 statement required by s. 101.161(1)(c).

469 (c) If the financial impact statement estimates an  
 470 indeterminate financial impact, the ballot must include the  
 471 statement required by s. 101.161(1)(d).

472 (d) If the members of the Financial Impact Estimating  
 473 Conference are unable to agree on the statement required by this  
 474 subsection, the ballot must include the statement required by s.  
 475 101.161(1)(e).

476 (5) (a) Any financial impact statement that the Supreme  
 477 Court finds not to be in accordance with this section shall be  
 478 remanded solely to the Financial Impact Estimating Conference  
 479 for redrafting, provided the court's advisory opinion is  
 480 rendered at least 75 days before the election at which the  
 481 question of ratifying the amendment will be presented. The  
 482 Financial Impact Estimating Conference shall prepare and adopt a  
 483 revised financial impact statement no later than 5 p.m. on the  
 484 15th day after the date of the court's opinion.

485 (b) If, by 5 p.m. on the 75th day before the election, the  
 486 Supreme Court has not issued an advisory opinion on the initial  
 487 financial impact statement prepared by the Financial Impact  
 488 Estimating Conference for an amendment that otherwise meets the  
 489 legal requirements for ballot placement, the financial impact  
 490 statement shall be deemed approved for placement on the ballot.

491 (6) (a) In addition to the financial impact statement  
 492 required by this section, the Financial Impact Estimating  
 493 Conference shall draft a financial information statement. The

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494 financial information statement should describe in greater  
 495 detail than the financial impact statement any projected  
 496 increase or decrease in revenues or costs that the state or  
 497 local governments would likely experience if the ballot measure  
 498 were approved. If appropriate, the financial information  
 499 statement may include both estimated dollar amounts and a  
 500 description placing the estimated dollar amounts into context.  
 501 The financial information statement must include both a summary  
 502 of not more than 500 words and additional detailed information  
 503 that includes the assumptions that were made to develop the  
 504 financial impacts, workpapers, and any other information deemed  
 505 relevant by the Financial Impact Estimating Conference.

506 (b) The Department of State shall have printed, and shall  
 507 furnish to each supervisor of elections, a copy of the summary  
 508 from the financial information statements. The supervisors shall  
 509 have the summary from the financial information statements  
 510 available at each polling place and at the main office of the  
 511 supervisor of elections upon request.

512 (c) The Secretary of State and the Office of Economic and  
 513 Demographic Research shall make available on the Internet each  
 514 financial information statement in its entirety. In addition,  
 515 each supervisor of elections whose office has a website shall  
 516 post the summary from each financial information statement on  
 517 the website. Each supervisor shall include a copy of each  
 518 summary from the financial information statements and the  
 519 Internet addresses for the information statements on the  
 520 Secretary of State's and the Office of Economic and Demographic  
 521 Research's websites in the publication or mailing required by s.  
 522 101.20.

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523 (7) This section does not apply to constitutional  
524 amendments proposed by initiative.

525 Section 6. Section 101.171, Florida Statutes, is amended to  
526 read:

527 101.171 Copy of constitutional amendment to be available at  
528 voting locations.—Whenever any amendment to the State  
529 Constitution is to be voted upon at any election, the Department  
530 of State shall have printed and shall furnish to each supervisor  
531 of elections a sufficient number of copies of the amendment  
532 either in poster or booklet form, and the supervisor shall  
533 provide have a copy in a designated area of each polling  
534 location as determined by the supervisor thereof conspicuously  
535 posted or available at each polling room or early voting area  
536 upon the day of election.

537 Section 7. The provisions of this act apply to revisions or  
538 amendments to the State Constitution which are proposed for the  
539 2020 general election and each election thereafter; provided,  
540 however, that nothing in this act affects the validity of any  
541 petition form gathered before the effective date of this act or  
542 any contract entered into before the effective date of this act.  
543 Petition forms gathered before the effective date of this act  
544 shall be governed by the laws existing at the time that the form  
545 was initially gathered.

546 Section 8. If any provision of this act or its application  
547 to any person or circumstance is held invalid for any reason,  
548 the remaining portion of this act, to the fullest extent  
549 possible, shall be severed from the void portion and given the  
550 fullest possible force and application.

551 Section 9. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20  
Meeting Date

SB 1794  
Bill Number (if applicable)

258 150  
Amendment Barcode (if applicable)

Topic Constitutional Amendments

Name Matt Dailey

Job Title Grad Student - FSU MAAAPP

Address 134 Northcutt Terrace

Phone 850 602 4167

Tallahassee FL 32317  
City State Zip

Email theredmattdailey@gmail.com

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20

Meeting Date

1794

Bill Number (if applicable)

258150

Amendment Barcode (if applicable)

Topic Constitutional Amendments

Name Rev. Joe Parramore

Job Title Pastor

Address 6099 Pat Thomas Pkwy

Phone 850-627-8540

Street

Quincy

City

FL

State

32351

Zip

Email rev.joe.parramore@gmail.com

Speaking:  For  Against  Information

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

Representing New Journey Ministries

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20

Meeting Date

SB1794

Bill Number (if applicable)

258150

Amendment Barcode (if applicable)

Topic Constitutional Amendments

Name Robert McKinnon

Job Title ~~State Director~~ State Director

Address 25 N. Marker St. Ste 111

Street

Jacksonville

City

FL

State

32205

Zip

Phone 843 364-4403

Email juey@faithinpubliclife.org

Speaking:  For  Against  Information

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

Representing Faith in Public Life

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/2020  
Meeting Date

SB 1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Charles S Fox

Job Title Teacher

Address 6627 Kestrel Cir

Phone 239-940-5095

Street

Ft Myers  
City

FL  
State

33906  
Zip

Email Charles.Fox@aol.com

Speaking:  For  Against  Information

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

Representing ~~Teacher Assn of Lee Co~~ Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020

Meeting Date

SB 1794

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Eric Rodriguez

Job Title Teacher

Address 8833 141 Lane

Phone (386) 249-0923

Street

City Live Oak State FL Zip 32060

Email Eric.Rodriguez@floridaea.org

Speaking: [ ] For [X] Against [ ] Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020

Meeting Date

CS/CS 1794

Bill Number (if applicable)

Topic Constitution Amendments

Amendment Barcode (if applicable)

Name Trish Neely

Job Title Consultant

Address 2024 Shangri La Lane

Phone 850 322 3317

Street

Tallahassee FL 32303

City

State

Zip

Email

Speaking:  For  Against  Information

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

Representing League Women Voters

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/2020

Meeting Date

1794

Bill Number (if applicable)

Topic Ballot Initiatives

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title Public Policy

Address 126 N. Mills Ave

Phone 4073264801

Street

Orlando

City

FL

State

32801

Zip

Email ida.eskamani@gmail.com

Speaking:  For  Against  Information

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

Representing Organize Florida + New Florida Majority

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/20  
Meeting Date

1794  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title \_\_\_\_\_

Address 1021-2 Crest St

Phone 941-323-2404

Street

TLH  
City

FL  
State

32301  
Zip

Email cullenasea@aol.com

Speaking:  For  Against  Information

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

Representing SIERRA CLUB FL

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-26-2020  
Meeting Date

1794  
Bill Number (if applicable)

Topic Constitutional Amendment

Amendment Barcode (if applicable)

Name Jodi James

Job Title Chair

Address 1375 Cypress Ave  
Street

Phone 321 890 7302

Melbourne FL 32935  
City State Zip

Email jodi@FLCAN.org

Speaking:  For  Against  Information

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

Representing Floridians for Freedom

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/20  
Meeting Date

1794  
Bill Number (if applicable)

Topic Initiatives

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Job Title \_\_\_\_\_

Address 135 S. Monroe

Phone 850-224-6926

Street

Tallahassee

FL

32301

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida AFL-CIO

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2.26.20

*Meeting Date*

SB 1794

*Bill Number (if applicable)*

Topic Undermining Citizen Initiative Petition Process

*Amendment Barcode (if applicable)*

Name Kara Gross

Job Title Legislative Director

Address 4343 West Flagler St.

Phone 786-363-4436

*Street*

Miami

FL

33134

Email kgross@aclufl.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing American Civil Liberties Union of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/2020

Meeting Date

1794

Bill Number (if applicable)

Topic Const. Amendments

Amendment Barcode (if applicable)

Name Christopher Emmanuel

Job Title Policy Director

Address Bo J. Brannock

Phone \_\_\_\_\_

Street

1218  
City

FL  
State

3230  
Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Chamber

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/20

Meeting Date

1794

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name B. D. Jogerst

Job Title \_\_\_\_\_

Address 516 N Adams

Street

Phone \_\_\_\_\_

City

State

32301

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/24/2020

Meeting Date

SB 1794

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name April D. Isaacs

Job Title Teacher

Address 1911 Kings Pt. Blvd.

Phone (407) 414-1670

Street

Kissimmee

FL

34744

City

State

Zip

Email adisaacs0039@hotmail.com

Speaking:  For  Against  Information

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

Representing <sup>Self</sup> Osceola County Education Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-26-2020

Meeting Date

SB1794

Bill Number (if applicable)

Topic CONSTITUTIONAL AMENDMENTS

Amendment Barcode (if applicable)

Name JOHN BAUMAN

Job Title \_\_\_\_\_

Address 5917 VIA VERMILYA #105

Phone 561 359 8552

Street

LAKE WORTH FL 33462

Email JAB721@ATT.NET

City

State

Zip

Speaking:  For  Against  Information

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

Representing SELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/26/2020  
Meeting Date

SB 1794  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name ROBERTO A. CRUZ

Job Title \_\_\_\_\_

Address 7530 CHICORA CT

Phone 561-714-4386

Street

LAKE WORTH FL

33467

Email CRUZ\_VA1@YAHOO.COM

City

State

Zip

Speaking:  For  Against  Information

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

Representing SELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020 Meeting Date

SB 1794 Bill Number (if applicable)

Topic Constitutional Admendments

Amendment Barcode (if applicable)

Name Kimbra Hanshaw

Job Title Teacher - 36 YRS.

Address 11087 Steve Roberts Special Street

Phone 863-781-

Zolfo Springs FL 33890 City State Zip

Email kimhanshaw2@gmail.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Myself

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-26-20

Meeting Date

SB 1794

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name April Clark

Job Title Public Educator

Address 108 Robin Ave

Phone

Street

Sebring

FL

State

33870

Zip

Email

Speaking: [ ] For [ ] Against [ ] Information

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

Representing self

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

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THE FLORIDA SENATE

APPEARANCE RECORD

02/26/2020

Meeting Date

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

SB 1794

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Mitzi Powell

Job Title Public school teacher

Address P.O. Box 929 - 4308 Church Ave

Phone 863-445-0215

Street

Bowling Green, FL 33834

City

State

Zip

Email mitzip79@hotmail.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Myself

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/2020  
Meeting Date

SB 1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Belinda Ristenbuog

Job Title \_\_\_\_\_

Address 4509 S. Grady Avenue  
Street

Phone 813-712-9039

Tampa FL 33611  
City State Zip

Email avlon123@yahoo.com

Speaking:  For  Against  Information

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

Representing Myself - Citizen

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

02/26/2020  
Meeting Date

SB1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Samantha Mrozowski

Job Title Teacher

Address 4115 Gross Ave

Phone 863-464-7356

Street

Sebring  
City

FL  
State

33875  
Zip

Email spage1983@gmail.com

Speaking:  For  Against  Information

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

Representing myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

9/26/2020  
Meeting Date

SB 1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Laura Lavett-Estima

Job Title District Records Clerk

Address 3610 Avenue Q  
Street

Phone 772-332-8229

Fort Pierce FL 34947  
City State Zip

Email malachilw@gmail.com

Speaking:  For  Against  Information

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

Representing ~~Education Association of St. Lucie~~ Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20

Meeting Date

SB 1794

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Matt Dailey

Job Title Grad Student - FSU MAAPP

Address 134 Northcutt Terrace

Phone 850 602 4167

Street

Tallahassee

City

FL

State

32317

Zip

Email the.realmattdailey@gmail.com

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

2/26/20

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

1794

Meeting Date

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Rev. Joe Parramore

Job Title Pastor

Address 6099 Pat Thomas Pkwy

Phone 850-627-8540

Street

Quincy

FL

State

32351

Zip

Email cevjoe.parramore@gmail.com

Speaking:  For  Against  Information

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

Representing New Journey Ministries

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26  
Meeting Date

3B 1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Nicolette Owens

Job Title hg. school educator

Address 5131 Portofino Landings Blvd #204 Phone 772-267-0827  
Street

FOA Place, Florida 34947 Email menicko@yahoo.com  
City State Zip

Speaking:  For  Against  Information

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

Representing myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/2020  
Meeting Date

SB 1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Paul Hamilton

Job Title Teacher

Address 1716 SE 27<sup>th</sup> Way  
Street

Phone (561) 236-1534

Boynton Beach FL 33435  
City State Zip

Email Vode176@gmail.com

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20  
Meeting Date

1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Lare Allen

Job Title Middle School Dean of Students

Address 618 Robin Ln

Phone 407 837 2243

Kissimmee FL 34759

Email N8hvestuff@gmail.com

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

02/26/2020

Meeting Date

SB 1704

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name MERAVIA SMITH

Job Title ORGANIZER

Address 2718 Candlewood Ct.

Phone 407-225-3731

Apopka FL 32703

Email ASMITH@OVSSR.ORG

Speaking:  For  Against  Information

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

Representing MYSELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

02/26/2020 Meeting Date

SB 1794 Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Melissa Merriweather

Job Title Instructional Paraprofessional

Address 2416 NE 32nd St. Street

Phone 352.299.10456

Ocala City

FL State

34479 Zip

Email mmkiad7@yahoo.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Self

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/20  
Meeting Date

SB-1794  
Bill Number (if applicable)

Topic INITIATIVE PETITIONS

Amendment Barcode (if applicable)

Name J. B. CLARK

Job Title LOBBYIST

Address 2041 CYNTHIA DRIVE  
Street

Phone 250-556-8143

TALLAHASSEE FL 32303  
City State Zip

Email JBCCLARKS@EARTHLINK.NET

Speaking:  For  Against  Information

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

Representing FL. ELECTRICAL WORKERS ASSN.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020 Meeting Date

SB 1794 Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Dr. Ana Ciereszko

Job Title —

Address 7550 SW 61 St.

Phone 305 321 0016

Miami, FL 33143 City State Zip

Email aciereszko@yahoo.com

Speaking: For [ ] Against [x] Information [ ]

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

Representing myself

Appearing at request of Chair: Yes [ ] No [x]

Lobbyist registered with Legislature: Yes [x] No [ ]

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020  
Meeting Date

SB 1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Caitlin Gille

Job Title Assoc. Professor

Address 3410 Riverview Dr

Phone 352 573 1776

Street

Tampa

FL

33604

City

State

Zip

Email cmgille@gmail.com

Speaking:  For  Against  Information

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

Representing myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-26-20

Meeting Date

1794

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Jane West

Job Title Policy + Planning Director

Address 24 Cathedral Place

Phone 904-671-4008

Street

St Augustine FL 32084

City

State

Zip

Email jwest@1000fof.org

Speaking:  For  Against  Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/20

Meeting Date

1794

Bill Number (if applicable)

Topic Ballet

Amendment Barcode (if applicable)

Name Marcus Dixon

Job Title \_\_\_\_\_

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

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing SEIU Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/2020  
Meeting Date

SB 1794  
Bill Number (if applicable)

Topic Constitutional Adments

Amendment Barcode (if applicable)

Name Marcia Beasley

Job Title Retired Citizen

Address 12009 Dawn Vista Dr

Phone 813 431 9717

Riverview FL 33578  
City State Zip

Email mbeasley547@gmail.com

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-26-2020 Meeting Date

SB 1794 Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Bryan Porter

Job Title Electrician

Address 24961 W.E. 135th ST.

Phone 386-682-8243

Street City State Zip  
Sgt Springs FL 32134

Email BP179@xs4001.com

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

26 FEBRUARY 2020

Meeting Date

SB 1794

Bill Number (if applicable)

Topic CONSTITUTIONAL AMENDMENTS

Amendment Barcode (if applicable)

Name KIM SMITH

Job Title SELF

Address 7024 GLENVIEW DR

Phone

Street

TAMPA

FL

33619

Email

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [X] Against

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

Representing

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/2020

Meeting Date

SB 1794

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Veronica Smith

Job Title Teacher

Address 5141 Alliance Ave

Phone \_\_\_\_\_

Street

Spring Hill FL 341609

City

State

Zip

Email Vsmithns09@yahoo

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/20  
Meeting Date

SB 1794  
Bill Number (if applicable)

Topic Constitutional amendments

Amendment Barcode (if applicable)

Name Trevor Chapman

Job Title Electrician

Address 2602 NE 6<sup>th</sup> ave

Phone 850-491-8340

Street

Ocala  
City

FL  
State

34470  
Zip

Email wakullafootball60@gmail.com

Speaking:  For  Against  Information

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

Representing myself

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**

2-26-2020  
Meeting Date

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

SB 1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Andy Starling

Job Title \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

Bronson

City

FL

State

32621

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-26-2020  
Meeting Date

SB 1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Barbara Bridgett

Job Title Teacher

Address 13706 41st Lane N

Phone 561-436-9484

Royal Palm Beach FL 33411  
City State Zip

Email bridgettb117@gmail.com

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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# APPEARANCE RECORD

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

2/26/2020

Meeting Date

1794

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Kevin Hanson

Job Title Teacher

Address 4900 SW 46<sup>th</sup> Ct

Phone 352 201 0135

Street

Ocala

City

FL

State

34474

Zip

Email Kevinrhanson@gmail.com

Speaking:  For  Against  Information

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

Representing Myself

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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# APPEARANCE RECORD

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

2-26-2020

Meeting Date

SB1794

Bill Number (if applicable)

Topic CONSTITUTIONAL ADMENDMENTS

Amendment Barcode (if applicable)

Name FRANK ANGEL

Job Title \_\_\_\_\_

Address 2180 VIA EDEN

Street

Phone \_\_\_\_\_

BOCA RATON FL.

City

State

33433

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing SELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20 Meeting Date

SB 1794 Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name James L. Worntz

Job Title

Address 2500 Lynx Lane Street

Phone 907-625-9511

Orlando, FL 32804 City State Zip

Email

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-26-20

Meeting Date

SB 1794

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Jayne Walker

Job Title

Address 1437 Quailty St

Phone 407-404-0047

Street

Orlando FL 32804

Email Jaywanne@aol.com

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information

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

Representing SELF

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [ ] No

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

2-26-2020  
Meeting Date

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

1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Laurnyn Duckworth

Job Title ~~Principal~~ Teacher

Address 4900 SW 46<sup>th</sup> Ct

Phone 352-229-1140

Ocala, FL 34474  
Street City State Zip

Email laurnynduck@gmail.com

Speaking:  For  Against  Information

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

Representing myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/2020  
Meeting Date

SB 1799  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Nicholas Mrozowski

Job Title Teacher

Address 4115 GRASS AVE  
Street

Phone 386-747-6510

SEBRING FL 33875  
City State Zip

Email NICK MROZ@GMAIL  
com

Speaking:  For  Against  Information

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

Representing MYSELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/20  
Meeting Date

1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Colleen Peterson

Job Title Teacher

Address 958 SW Whittier Ter.  
Street

Phone 772-224-5545

Port St. Lucie FL 34953  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/2020  
Meeting Date

SB 1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name LaShawn Floyd

Job Title Educational Support Professionals

Address 1583 SE Tiffany Club Pl

Phone 561-201-1214

Port St. Lucie, FL 34952

Email laflo73@hotmail.com

City State Zip

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-26-2020  
Meeting Date

1794  
Bill Number (if applicable)

Topic Constitutional Amendment

Amendment Barcode (if applicable)

Name Tanya Bailey

Job Title Veteran Liason

Address 132 Lagoon Rd  
Street

Phone 757-788-9496

Winter Haven, FL 33884  
City State Zip

Email bailey.tanem@gmail.com

Speaking:  For  Against  Information

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

Representing Florida Cannabis Action Network

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/2020  
Meeting Date

1794  
Bill Number (if applicable)

Topic Constitutional Amendment

Amendment Barcode (if applicable)

Name Tabitha Burress

Job Title H320 Randall Blvd

Address ↓

Phone 341 20

Street

Naples

City

FL

State

34120

Zip

Email tabitha.burress@gmail.com

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/20

Meeting Date

1794

Bill Number (if applicable)

Topic Initiatives

Amendment Barcode (if applicable)

Name William Lawson

Job Title Field Rep

Address 595 W. Church St

Phone 407-287-6081

Street

Orlando FL 32805

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/20

Meeting Date

SB 1794

Bill Number (if applicable)

Topic CONSTITUTIONAL AMENDMENTS

Amendment Barcode (if applicable)

Name JASON SORENSON

Job Title ELECTRICAL WORKERS

Address 174 GARY AVE.

Phone 786-215-5481

Street

ORLANDO FL 32759

Email -

City

State

Zip

Speaking:  For  Against  Information

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

Representing MYSELF

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

2-26-2020

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

SB 1794

Bill Number (if applicable)

Meeting Date

Topic Constitution Amendment

Amendment Barcode (if applicable)

Name Adam Campbell

Job Title \_\_\_\_\_

Address 3738 Kenyon Road

Phone 561-452-7744

Street

Lake Worth FL 33461

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing my self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

2/26/20

Meeting Date

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

SB1794

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Robert McKinnon

Job Title State Director

Address 25 N. Market St. Ste 111

Phone 843 364-4403

Street

Jacksonville

FL

32205

City

State

Zip

Email joey@faithinpubliclife.org

Speaking:  For  Against  Information

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

Representing Faith in Public Life

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020 Meeting Date

1794 Bill Number (if applicable)

Topic Re Constitutional Amendments

Amendment Barcode (if applicable)

Name Rob Kriete

Job Title President - Hillsborough Classroom Teachers Association

Address 6708 Providence Road

Phone 813 787 8351

Riverview FL 33578

Email Rob.Kriete@gmail.com

Speaking: For Against Information

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

Representing NCTA Individual

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20  
Meeting Date

SB 1794  
Bill Number (if applicable)

Topic CONSTITUTIONAL AMENDMENTS

Amendment Barcode (if applicable)

Name NICOLE BIENER

Job Title TEACHER

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

GAINESVILLE FL

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing SELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

26 Feb. 2020  
Meeting Date

SB 1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Johnny A. Green

Job Title Educator

Address 10927-Avelar Ridge Dr  
Street

Phone 813-767-8865

Riverview FL 33578  
City State Zip

Email JohnnyA@greeneducation.com

Speaking:  For  Against  Information

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

Representing ~~Florida Education Association~~ ~~Florida Education Association~~ ~~Florida Education Association~~ ~~Florida Education Association~~ Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/2020

Meeting Date

1794

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Chris Rusnak

Job Title Teacher

Address 512 Cliff Drive

Phone 813-243-3972

Street

Temple Terrace

FL

33617

City

State

Zip

Email tigerguan@yahoo.com

Speaking:  For  Against  Information

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

Representing ~~\_\_\_\_\_~~ ~~\_\_\_\_\_~~ ~~\_\_\_\_\_~~ ~~\_\_\_\_\_~~ INDIVIDUAL

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/2014

Meeting Date

1794

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name JONATHAN WEBER

Job Title Deputy Director

Address 1700 N. WINDY ST. #11-216

Phone 954-593-4449

Street

TALLAHASSEE

FL

32303

City

State

Zip

Email JWEBBER@FCWTERS.ORG

Speaking:  For  Against  Information

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

Representing FLORIDA CONSERVATION VOTERS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

07-26-2020

Meeting Date

1794

Bill Number (if applicable)

Topic CONSTITUTIONAL AMENDMENTS

Amendment Barcode (if applicable)

Name ROBERT CHAPMAN

Job Title STATE EMPLOYEE

Address 3622 WJULIAN RAY ROAD

Phone \_\_\_\_\_

Street

PLANT CITY FLORIDA 33765

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing SELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020

Meeting Date

SB 1794

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Shaquille Mackey

Job Title \_\_\_\_\_

Address \_\_\_\_\_

Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing International Longshoreman

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26

Meeting Date

SB 1794

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Angie Doherty

Job Title

Address 4410 NW 15th PL

Phone (352) 519-9005

Street

Gainesville, FL

Email doherty.1aj@aol.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20

Meeting Date

SB1794

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Michael Nelson

Job Title Heavy Equipment Operator

Address 1628 SW 4th Street

Phone 352-497-8041

Street

Ocala

FL

34471

City

State

Zip

Email

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Myself

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

02/26/2020  
Meeting Date

SB 1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Veronica Mabuse

Job Title Longshoreman

Address 7119 Pender Way

Phone 407-276-1423

Street

Orlando  
City

FL  
State

32822  
Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Working Family Corp Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

2/26/2020  
Meeting Date

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

SB 1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Natalie Hayes

Job Title Long Shore man

Address 7119 Pender Way

Phone

Street Orlando FL 32822  
City State Zip

Email nrhayes809@yahoo

Speaking:  For  Against  Information

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

Representing

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-26-2020  
Meeting Date

SB 1794  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name David Ash

Job Title \_\_\_\_\_

Address PO Box 11201

Phone 850-251-0985

Tallahassee FL 32302  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Common Cause FL

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020  
Meeting Date

1794  
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Exec. Director

Address 579 E. Call St.

Phone 850-321-9386

Tallahassee FL 32301  
City State Zip

Email fcfeep@yahoo.com

Speaking:  For  Against  Information

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

Representing FI Center for Fiscal & Economic Policy

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/CS/SB 662

INTRODUCER: Rules Committee; Military and Veterans Affairs and Space Committee; Education Committee; and Senator Wright

SUBJECT: Education and the Military

DATE: February 26, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sagues</u>	<u>Sikes</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Caldwell</u>	<u>MS</u>	<u>Fav/CS</u>
3.	<u>Sagues</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 662 gives greater flexibility to transitioning students from military families by considering a student a resident of the school district at the point in time in which the parent is transferred or pending transfer to a military installation within the state, for purposes of enrollment and preferential treatment in special programs.

The bill also modifies the school grading model for high schools by adding to the calculation the percentage of students who earn a Category II Armed Forces Qualification Test score or higher on the Armed Services Vocational Aptitude Battery and have earned a minimum of two credits in Junior Reserve Officers' Training Corps courses from the same branch of the United States Armed Forces as a school grade college and career acceleration component.

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

The bill takes effect July 1, 2020, although the provisions to modify the school grading model begin with the 2022-2023 school year.

## II. Present Situation:

### **Military Families and Student Transfer to a Public School**

Special accommodations are provided to students of military families transitioning between schools.

A dependent child of active duty military personnel who meets the eligibility criteria for a special academic program at a public school is given preference for admission even if the program is offered through a different public school than the school at which the student would be assigned. A special academic program is a magnet school, advanced study program, advanced placement, dual enrollment, Advanced International Certificate of Education, and International Baccalaureate.<sup>1</sup>

Additionally, a student whose parent is transferred or is pending a transfer to a military installation within a school district pursuant to a military order is considered a resident of the school district for purposes of enrollment at the point in time in which the order is submitted to the district, and is given preferential treatment in the controlled open enrollment process.<sup>2</sup>

### **Junior Reserve Officers' Training Corp**

The U.S. Army Junior Reserve Officers' Training Corps (JROTC) is one of the largest youth character development and citizenship programs in the world. The National Defense Act of 1916 established organized JROTC programs at public and private educational institutions. In 1964, Congress expanded the program to require each military service to have a JROTC program.<sup>3</sup> The U.S. Army's JROTC program operates in more than 1,700 public and private high schools, military institutions, and correctional centers both in the U.S. and overseas.<sup>4</sup> Almost 4,000 instructors who are retired from active duty, reserve duty, or National Guard Army service comprise JROTC faculty. Instructors are trained and qualified in accordance with the National Defense Authorization Act of 2007 to teach and mentor approximately 314,000 JROTC students (cadets) annually.<sup>5</sup> JROTC curriculum includes teaching lessons on leadership, health and wellness, physical fitness, first aid, geography, American history and government, communications, and emotional intelligence.<sup>6</sup>

Since 2005, the U.S. Army JROTC program has been accredited as a Special Purpose Program by AdvancED, now known as Cognia, a national accrediting agency.<sup>7</sup>

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<sup>1</sup> Section 1003.05(3), F.S.

<sup>2</sup> Section 1003.05(4), F.S.

<sup>3</sup> U.S. Army JROTC, *Army Junior ROTC Program Overview*, available at [http://www.usarmyjrotc.com/general/program\\_overview.php](http://www.usarmyjrotc.com/general/program_overview.php) (last visited Feb. 13, 2020). Specifically, the Secretary of each military department must establish and maintain the JROTC at each public and private secondary education institution which applies for a unit provided that they meet specified standards and criteria (10 U.S.C. § 2031).

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

<sup>5</sup> *Id.*

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

<sup>7</sup> Cognia, *Accreditation & Certification*, available at <https://www.cognia.org/accreditation-certification/> (last visited Feb. 13, 2020).

## Armed Services Vocational Aptitude Battery

The Armed Services Vocational Aptitude Battery (ASVAB) is a multiple choice test, administered by the United States Military Entrance Processing Command, used to determine qualification for enlistment in the United States' Armed Forces.<sup>8</sup>

The ASVAB is a timed multi-aptitude test, which is given at over 14,000 schools and Military Entrance Processing Stations nationwide and is developed and maintained by the Department of Defense.<sup>9</sup> The test measures a young adult's strengths and potential for success in military training.

The ASVAB consists of 10 subtests, and the scores on those subtests are used to determine the best jobs for those entering a branch of the military. Scores from four of the math and verbal domain subtests are used to calculate the Armed Forces Qualification Test (AFQT) score, which determines eligibility for military enlistment.<sup>10</sup>

Each branch of the military has different standards. Minimum scores that each branch of the military requires depends on whether a potential recruit has a high school diploma or a high school equivalency diploma (GED). Students with a GED need a higher minimum AFQT score than students with a high school diploma. An AFQT score of 60 indicates that the examinee scored as well as or better than 60 percent of the nationally representative sample. For high school graduates with a diploma, requirements by military branch are:<sup>11</sup>

- Air-Force recruits are required to have a minimum AFQT score of 36.
- Army recruits are required to have a minimum AFQT score of 31.
- Coast-Guard recruits are required to have a minimum AFQT score of 40.
- Marine recruits are required to have a minimum AFQT score of 32.
- National-Guard recruits are required to have a minimum AFQT score of 31.
- Navy recruits are required to have a minimum AFQT score of 35.

AFQT scores are divided into these categories, and Category V recruits are ineligible to enlist in any of the military services:<sup>12</sup>

- Category I - 93-99.
- Category II - 65-92.
- Category IIIa - 50-64.
- Category IIIb - 31-49.
- Category IVa - 21-30.
- Category IVb - 16-20.
- Category IVc - 10-15.
- Category V - 0-9.

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<sup>8</sup> Official ASVAB, *ASVAB Fact Sheet* (2018), available at [http://www.officialasvab.com/docs/asvab\\_fact\\_sheet.pdf](http://www.officialasvab.com/docs/asvab_fact_sheet.pdf). (last visited Feb. 13, 2020).

<sup>9</sup> Military.com, *The ASVAB Test*, available at <https://www.military.com/join-armed-forces/asvab> (last visited Feb. 13, 2020).

<sup>10</sup> US Military Careers, *How the ASVAB Score is Computed*, available at <https://www.thebalancecareers.com/how-the-asvab-afqt-score-is-computed-3354094> (last visited Feb. 13, 2020).

<sup>11</sup> *Id.*

<sup>12</sup> Military Aptitude Tests, *Armed Services Vocational Aptitude Battery: Introduction*, available at <http://www.militaryaptitudetests.com/asvab> (last visited Feb. 13, 2020).

### ***Junior Reserve Officers' Training Corp in Florida***

Under Florida law, a school district may not ban any branch of the United States Armed Forces or the United States Department of Homeland Security from establishing, maintaining, or operating a unit of the Junior Reserve Officers' Training Corps at a public high school, and:<sup>13</sup>

- A school district must allow a student attending a public high school in the district to enroll in the JROTC at another public school under certain conditions.<sup>14</sup>
- A school district must grant military recruiters of the United States Armed Forces and United States Department of Homeland Security the same access to secondary school students, and to school facilities and grounds, that the district grants to postsecondary educational institutions or prospective employers of students.<sup>15</sup>

### **Every Student Succeeds Act (ESSA)**

The Every Student Succeeds Act (ESSA), which reauthorized the Elementary and Secondary Education Act (ESEA), was signed into federal law December 10, 2015. ESSA includes provisions to:<sup>16</sup>

- Help ensure success for students and schools through advancing equity by upholding protections for disadvantaged and high-need students.
- Require all students to be taught to high academic standards that will prepare them to succeed in college and in a career.
- Ensure that vital information is provided to educators, families, students, and communities through annual statewide assessments that measure student progress.
- Support and grow local innovations.
- Increase access to high-quality preschool.
- Maintain an expectation that there will be accountability and action to effect positive change in the lowest-performing schools.

The United States Department of Education approved Florida's ESSA plan on September 26, 2018. The state ESSA includes the college and career acceleration component of the school grading formula that awards points for students who earn accelerated credit during their high school career.<sup>17</sup>

### **School Grading System**

School grades provide an easily understandable way to measure the performance of a school. Parents and the general public can use the school grade and its components to understand how well each school serves students.<sup>18</sup> School grades are used in the state system of school

<sup>13</sup> Section 1003.451(1), F.S.

<sup>14</sup> Section 1003.451(2)(a), F.S.

<sup>15</sup> Section 1003.451(3)(a), F.S.

<sup>16</sup> U.S. Department of Education, *Every Student Succeeds Act (ESSA)*, available at <https://www.ed.gov/essa?src=rn> (last visited Feb. 13, 2020).

<sup>17</sup> Florida Department of Education, *Every Student Succeeds Act (ESSA) State Plan* (2018), available at <http://www.fldoe.org/core/fileparse.php/14196/urlt/FL-ESSA-StatePlan.pdf>, pg. 20 (last visited Feb. 13, 2020).

<sup>18</sup> Florida Department of Education, *2019 School Grades Overview* (2019), available at <http://www.fldoe.org/core/fileparse.php/18534/urlt/SchoolGradesOverview19.pdf>. (last visited Feb. 13, 2020).

improvement and accountability to determine the need for school intervention and support,<sup>19</sup> or whether a school qualifies for school recognition funds.<sup>20</sup>

Schools are graded at one of the following grades:<sup>21</sup>

- “A,” schools making excellent progress (62 percent or higher of total applicable points).
- “B,” schools making above average progress (54 to 61 percent of total applicable points).
- “C,” schools making satisfactory progress (41 to 53 percent of total applicable points).
- “D,” schools making less than satisfactory progress (32 to 40 percent of total applicable points).
- “F,” schools failing to make adequate progress (31 percent or less of total applicable points).

Elementary schools, middle schools, and high schools each share a basic model for determining school grades, based on the percentage of total points earned by a school for each component in the model. All schools are graded on the percentage of eligible students who pass assessments in English and language arts (ELA), mathematics, science, and social studies; student learning gains in ELA and mathematics; and students in the lowest 25 percent of ELA and mathematics performers who make learning gains.<sup>22</sup> Middle and high school models include additional components beyond the basic model.<sup>23</sup>

For a high school comprised of grades 9 through 12 or grades 10 through 12, the school’s grade is also based on the following components:<sup>24</sup>

- The 4-year high school graduation rate of the school as defined by State Board of Education (SBE) rule.<sup>25</sup>
- The percentage of students who were eligible to earn college and career credit through College Board Advanced Placement (AP) examinations, International Baccalaureate (IB) examinations, dual enrollment courses, or Advanced International Certificate of Education (AICE) examinations; or who, at any time during high school, earned national industry certifications identified in the CAPE Industry Certification Funding List, pursuant to rules adopted by the SBE.

### III. Effect of Proposed Changes:

The bill gives greater flexibility to transitioning students from military families by considering a student a resident of the school district when the parent is transferred or pending transfer to a military installation within the state, for purposes of enrollment and preferential treatment in the open enrollment process.

<sup>19</sup> See s. 1008.33(4), F.S.

<sup>20</sup> See s. 1008.36, F.S.

<sup>21</sup> Section 1008.34(2), F.S. and Rule 6A-1.09981(4)(d), F.A.C.

<sup>22</sup> Section 1008.34(3)(b), F.S. If a school does not have at least 10 students with complete data for one or more of the components, those components may not be used in calculating the school’s grade. Section 1008.34(3)(a), F.S.

<sup>23</sup> See s. 1008.34(3)(b), F.S. and Rule 6A-1.09981(4)(a)-(c), F.A.C.

<sup>24</sup> Section 1008.34(3)(b)2., F.S., and Rule 6A-1.09981(4)(c)2. and 3., F.A.C.

<sup>25</sup> The four-year high school graduation rate of the school as measured according to 34 CFR §200.19, Other Academic Indicators, effective November 28, 2008. Rule 6A-1.09981(4)(c)1., F.A.C.

The bill also modifies the school grading model for high schools by adding to the calculation the percentage of students who earn a Category II Armed Forces Qualification Test score or higher on the Armed Services Vocational Aptitude Battery and have earned a minimum of two credits in Junior Reserve Officers' Training Corps courses from the same branch of the United States Armed Forces as a school grade college and career acceleration component.

The bill takes effect July 1, 2020, although the provisions to modify the school grading model begin with the 2022-2023 school year.

#### **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 revenue as specified by Article VII, Section 18 of the State Constitution.

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

None.

##### **C. Trust Funds Restrictions:**

None.

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

None.

##### **E. Other Constitutional Issues:**

None identified.

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

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

Fiscal impact is indeterminate. The Department of Education may incur additional costs from collecting and processing the data to be calculated into the school grades acceleration component. The bill also requires the Florida Department of Education (DOE) to amend the state Every Student Succeeds Act (ESSA) plan to reflect the change

in how the college and career acceleration component is calculated. After the plan is amended, the DOE must obtain approval of the amended plan by the U.S. Department of Education.<sup>26</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1003.05 and 1008.34.

**IX. Additional Information:**

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

**CS/CS/CS by Rules on February 26, 2020:**

The committee substitute maintains the provision that students must earn a Category II Armed Forces Qualification Test score or higher on the Armed Services Vocational Aptitude Battery and requires students to earn a minimum of two credits in JROTC courses from the same branch of the United States Armed Forces to qualify as a school grade college and career acceleration component.

The committee substitute also moves the implementation date for the school grading provisions from the 2021-2022 school year to the 2022-2023 school year.

**CS/CS by Military and Veterans Affairs and Space on February 19, 2020:**

The committee substitute gives greater flexibility to transitioning students from military families by considering a student a resident of the school district when the parent is transferred or pending transfer to a military installation within the state rather than within the district, for purposes of enrollment and preferential treatment in the open enrollment process. The committee substitute also revises the calculation of school grading by requiring that in addition to requiring a student to have earned a minimum of a Category II score on the Armed Forces Qualification Test, that the student had participated for 2 years in JROTC; enlisted in the military; been accepted into a U.S. military academy; or received documented military career counseling from a military recruiter.

**CS by Education on February 10, 2020:**

The committee substitute removes the requirement for students who completed two years of coursework as a participant in the United States Armed Forces Junior Reserve

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<sup>26</sup> Florida Department of Education, *2020 Agency Legislative Bill Analysis of SB 662* (Oct. 29, 2019) (on file with the Senate Committee on Military and Veterans Affairs and Space).

Officers' Training Corps program and earned a score of 31 or higher on the Armed Services Vocational Aptitude Battery as a school grade college and career acceleration component and replaces it with students who earn a Category II Armed Forces Qualification Test score or higher.

The committee substitute also moves the date of implementation from the 2020-2021 school year to the 2021-2022 school year to allow time for the Department of Education to collect the scores prior to modifying the school grade calculation.

**B. Amendments:**

None.



254598

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2020	.	
	.	
	.	
	.	

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The Committee on Rules (Wright) recommended the following:

**Senate Amendment**

Delete lines 88 - 97  
and insert:  
the 2022-2023 school year, who earned an Armed Services  
Qualification Test score that falls within Category II or higher  
on the Armed Services Vocational Aptitude Battery and earned a  
minimum of two credits in Junior Reserve Officers' Training  
Corps courses from the same branch of the United States Armed  
Forces.

By the Committees on Military and Veterans Affairs and Space;  
and Education; and Senator Wright

583-03935-20

2020662c2

1 A bill to be entitled  
2 An act relating to education and the military;  
3 amending s. 1003.05, F.S.; providing that a student  
4 whose parent is transferred or is pending transfer to  
5 a military installation within this state is  
6 considered a resident of the school district in which  
7 the military installation is located for the purpose  
8 of enrollment; requiring such students to receive  
9 certain preferential treatment; amending s. 1008.34,  
10 F.S.; revising the calculation of school grades for  
11 certain schools; providing an effective date.  
12  
13 Be It Enacted by the Legislature of the State of Florida:  
14  
15 Section 1. Subsection (4) of section 1003.05, Florida  
16 Statutes, is amended to read:  
17 1003.05 Assistance to transitioning students from military  
18 families.—  
19 (4) A student whose parent is transferred or is pending  
20 transfer to a military installation within the state ~~a school~~  
21 ~~district~~ while on active military duty pursuant to an official  
22 military order shall be considered a resident of the school  
23 district for purposes of enrollment when the order is submitted  
24 to the school district and shall be provided preferential  
25 treatment in the controlled open enrollment process of the  
26 school district pursuant to s. 1002.31.  
27 Section 2. Paragraph (b) of subsection (3) of section  
28 1008.34, Florida Statutes, is amended to read:  
29 1008.34 School grading system; school report cards;

Page 1 of 4

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

583-03935-20

2020662c2

30 district grade.—  
31 (3) DESIGNATION OF SCHOOL GRADES.—  
32 (b)1. Beginning with the 2014-2015 school year, a school's  
33 grade shall be based on the following components, each worth 100  
34 points:  
35 a. The percentage of eligible students passing statewide,  
36 standardized assessments in English Language Arts under s.  
37 1008.22(3).  
38 b. The percentage of eligible students passing statewide,  
39 standardized assessments in mathematics under s. 1008.22(3).  
40 c. The percentage of eligible students passing statewide,  
41 standardized assessments in science under s. 1008.22(3).  
42 d. The percentage of eligible students passing statewide,  
43 standardized assessments in social studies under s. 1008.22(3).  
44 e. The percentage of eligible students who make Learning  
45 Gains in English Language Arts as measured by statewide,  
46 standardized assessments administered under s. 1008.22(3).  
47 f. The percentage of eligible students who make Learning  
48 Gains in mathematics as measured by statewide, standardized  
49 assessments administered under s. 1008.22(3).  
50 g. The percentage of eligible students in the lowest 25  
51 percent in English Language Arts, as identified by prior year  
52 performance on statewide, standardized assessments, who make  
53 Learning Gains as measured by statewide, standardized English  
54 Language Arts assessments administered under s. 1008.22(3).  
55 h. The percentage of eligible students in the lowest 25  
56 percent in mathematics, as identified by prior year performance  
57 on statewide, standardized assessments, who make Learning Gains  
58 as measured by statewide, standardized Mathematics assessments

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

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59 administered under s. 1008.22(3).

60 i. For schools comprised of middle grades 6 through 8 or  
61 grades 7 and 8, the percentage of eligible students passing high  
62 school level statewide, standardized end-of-course assessments  
63 or attaining national industry certifications identified in the  
64 CAPE Industry Certification Funding List pursuant to state board  
65 rule ~~rules adopted by the State Board of Education.~~

66  
67 In calculating Learning Gains for the components listed in sub-  
68 subparagraphs e.-h., the State Board of Education shall require  
69 that learning growth toward achievement levels 3, 4, and 5 is  
70 demonstrated by students who scored below each of those levels  
71 in the prior year. In calculating the components in sub-  
72 subparagraphs a.-d., the state board shall include the  
73 performance of English language learners only if they have been  
74 enrolled in a school in the United States for more than 2 years.

75 2. For a school comprised of grades 9, 10, 11, and 12, or  
76 grades 10, 11, and 12, the school's grade shall also be based on  
77 the following components, each worth 100 points:

78 a. The 4-year high school graduation rate of the school as  
79 defined by state board rule.

80 b. The percentage of students who were eligible to earn  
81 college and career credit through College Board Advanced  
82 Placement examinations, International Baccalaureate  
83 examinations, dual enrollment courses, or Advanced International  
84 Certificate of Education examinations; ~~or~~ who, at any time  
85 during high school, earned national industry certification  
86 identified in the CAPE Industry Certification Funding List,  
87 pursuant to rules adopted by the state board; or, beginning with

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88 the 2021-2022 school year, who earned an Armed Services

89 Qualification Test score that falls within Category II or higher  
90 on the Armed Services Vocational Aptitude Battery and:

91 (I) Participated in a Junior Reserve Officers' Training  
92 Corps program for 2 years;

93 (II) Enlisted in the military;

94 (III) Were accepted into a United States military academy;

95 or

96 (IV) Received documented military career counseling from a  
97 recruiter for a branch of the United States Armed Forces.

98 Section 3. This act shall take effect July 1, 2020.

Page 4 of 4

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Military and Veterans Affairs and Space, *Chair*  
Children, Families, and Elder Affairs  
Commerce and Tourism  
Environment and Natural Resources

### JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT  
14th District

February 19, 2020

The Honorable Lizbeth Benacquisto  
400, Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Re: Senate Bill 662 – School Grading System

Dear Chair Benacquisto:

Senate Bill 662, relating to School Grading System has been referred to the Committee on Rules. I am requesting your consideration on placing SB 662 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom A. Wright", enclosed in a simple, hand-drawn oval.

Tom A. Wright, District 14

cc: John B. Phelps, Staff Director of the Committee on Rules  
Cynthia Futch, Administrative Assistant of the Committee on Rules

### REPLY TO:

- 4806 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
- 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

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

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/2020

*Meeting Date*

662

*Bill Number (if applicable)*

254598

*Amendment Barcode (if applicable)*

Topic SB 662 - Education and the Military; Amendment 254598

Name Bethany Swonson

Job Title Deputy Chief of Staff

Address 325 W. Gaines Street

*Street*

Tallahassee

*City*

Florida

*State*

32399

*Zip*

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Department of Education

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1492

INTRODUCER: Rules Committee and Senator Wright

SUBJECT: Consumer Protection

DATE: February 28, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<b>Fav/1 amendment</b>
3.	<u>Knudson</u>	<u>Phelps</u>	<u>RC</u>	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1492 modifies provisions in several areas that are regulated by the Department of Financial Services (DFS), including:

- Removing a fee for the replacement of PINs for credit freezes implemented under the Keeping I.D. Safe Act;
- Strengthening authority for the DFS Division of Consumer Services to request documents from licensed entities;
- Establishing a required licensure scheme for adjusting firms;
- Classifying the aiding and abetting of unlicensed activity by certain licensees as a third-degree felony;
- Prohibiting the use of “Medicaid” or “Medicare” in new insurance agency names;
- Requiring licensees regulated under ch. 626, F.S., to maintain the privacy of consumers’ personal financial or medical information;
- Extending telemarketing solicitation protections to Florida’s insurance consumers by prohibiting phone solicitation by an insurance licensee after 9 p.m., or before 8 a.m.;
- Ending the sale of industrial life insurance products;
- Increasing the possible suspension period for title insurance agent licensees from a 1-year period to a 2-year suspension period, thereby conforming to the permissible suspension period applicable to other insurance licensees;
- Extending the cooling-off period during which a consumer who entered into a contract with a property public adjuster may cancel the contract without cause;

- Requiring that a public adjuster's estimate of a property insurance loss be provided within 45 days or else the consumer may cancel the contract with the public adjuster until the public adjuster provides the estimate;
- Requiring that a specific disclosure is signed by any consumer whose policy will be exported into the surplus lines market;
- Expanding the definition of an unfair or deceptive trade practice to include the acts of initiating an insurance policy without a consumer's consent and effectuating an insurance policy by sending an invoice to a mortgagee or escrow agent without a consumer's consent;
- Amending the disclosure required by insurers who will use a consumer's credit score to calculate a premium to include references to the DFS resources for financial literacy and consumer assistance;
- Creating a hurricane season notice, which requires residential property insurance companies to electronically deliver the policy declarations page and an outline of the consumer's hurricane coverages and deductibles to their consumers in advance of each hurricane season;
- Requiring property insurers to provide additional information to their consumers during the claims handling process, e.g., the contact information of any adjuster assigned to the claim and the adjuster's report;
- Instituting a requirement that information communicated to the insurance consumer during the claims handling process also be sent to the consumer's agent of record;
- Updating the Homeowner Claims Bill of Rights to reflect additional duties imposed on insurers during the claims handling process;
- Providing that a property insurer may only provide a list of recommended or preferred vendors if requested by the insured;
- Prohibiting insurance policies sold in Florida after July 1, 2020, from including a forum selection clause that requires the consumer to pursue litigation, arbitration, or mediation outside of Florida;
- Removing the statutory requirement that an insured pay a \$100 deductible to receive payment on their claim through the Florida Insurance Guaranty Association;
- Consolidating the forms used by the DFS' Division of Unclaimed Property; and
- Conforming cross-references.

## II. Present Situation:

The Department of Financial Services (DFS or Department) has broad duties, including licensure and regulation of those who transact insurance; insurance consumer assistance and protection; and holding and attempting to return unclaimed property to its rightful owner.<sup>1</sup>

The present situation for each relevant provision of the bill is discussed in the Effect of Proposed Changes section of this bill analysis, below.

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<sup>1</sup> See, e.g., Department of Financial Services, *What DFS Can Do For You*, <https://www.myfloridacfo.com/division/CFO/DFS.htm> (last visited Jan. 27, 2020).

### III. Effect of Proposed Changes:

#### Credit Reports

A credit report is a record of a consumer's credit history and other information about the consumer, including his or her name, address, social security number, employment information, date of birth, and court judgments.<sup>2</sup> Three major credit bureaus—Equifax, Experian, and TransUnion—compile and sell consumer credit reports. Lenders, insurers, utility and cell phone companies, employers, and others may obtain a consumer's credit report for their use in determining, e.g., whether to extend credit, set insurance rates, or employ the consumer.<sup>3</sup> A consumer may also review his or her credit report at no charge once every 12 months from each of the credit bureaus.

#### *Security Freezes and the Keeping I.D. Safe (KIDS) Act*

The Keeping I.D. Safe (KIDS) Act<sup>4</sup> allows a third party, such as a parent or guardian, to place a security freeze on a minor child's credit report, or credit score to prevent the information from being released without express authorization to a third party, such as an insurer. After its receipt of a security freeze request, a credit reporting agency must provide a unique personal identification number (PIN) to the minor child's representative; this PIN is required to remove the security freeze. While credit reporting agencies are prohibited from charging any fee to place or remove a security freeze, they may charge up to \$10 to reissue a PIN.<sup>5</sup>

**Section 1** amends s. 501.0051, F.S., to prohibit a credit reporting agency from charging any fee to reissue a PIN or provide a new unique PIN to a consumer.

#### *Insurer's Use of Credit Score*

Section 626.9741, F.S., regulates and limits insurer's use of credit reports and scores for underwriting and rating personal lines motor vehicle insurance and personal lines residential insurance policies for Florida consumers. Specifically, an insurer must inform a consumer that it will access his or her credit report when the consumer submits an application for coverage. If the insurer denies the consumer's application based on the consumer's credit report, it must also give the consumer a copy of the credit report it relied on with an explanation of the reasons it denied coverage.

The DFS currently offers financial literacy courses to help consumers make informed financial and insurance-related decisions.<sup>6</sup>

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<sup>2</sup> 15 U.S. Code s. 1681 defines a "credit report" as any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, ... general reputation, [or] personal characteristics... which is used... for the purpose of... establishing the consumer's eligibility for credit or employment purposes.... The Florida KIDS Act adopts this definition of a "credit report" in s. 501.0051(1)(a), F.S.

<sup>3</sup> Board of Governors of the Federal Reserve System, *Credit Reports and Credit Scores: Consumer's Guide*, available at [https://www.federalreserve.gov/creditreports/pdf/credit\\_reports\\_scores\\_2.pdf](https://www.federalreserve.gov/creditreports/pdf/credit_reports_scores_2.pdf) (last visited Jan. 27, 2020).

<sup>4</sup> Section 501.0051, F.S.

<sup>5</sup> Section 501.0051(9), F.S.

<sup>6</sup> Florida Department of Financial Services, *Financial Literacy-Empowering You to Make Informed Financial Decisions*, <https://www.myfloridacfo.com/Division/Consumers/FinancialLiteracy.htm> (last visited Jan. 27, 2020).

**Section 13** amends s. 626.9741, F.S., to require an insurer to include the following language in its notice that a consumer's credit report or score is being requested:

The Department of Financial Services offers free financial literacy programs to assist you with insurance-related questions, including how credit works and how credit scores are calculated. To learn more, call 1-877-693-5236 or visit [www.MyFloridaCFO.com](http://www.MyFloridaCFO.com).

This section is effective January 1, 2021.

### **Division of Consumer Services**

The Division of Consumer Services (Division) provides education, information, and assistance to consumers for all products or services regulated by the DFS or the Financial Services Commission.<sup>7</sup> The Division of Consumer Services' duties specifically include:

- Receiving consumer questions and complaints;
- Educating the public about insurance-related topics;
- Providing mediation to resolve disputes between a consumer and insurance company; and
- Serving as a conduit for referrals for further legal action by the DFS.<sup>8</sup>

Section 624.307(10)(b), F.S., permits the Division to impose an administrative penalty on a person who holds a license or certificate of authority from the Department if he or she fails to respond to the Division's request for information within 20 days. This has been limited by the Fifth Amendment privilege against self-incrimination. A licensed individual must produce those records that are required to be kept by law, but is not required to produce those not within the purview of statutes.<sup>9</sup> Conversely, a corporation has no privilege against self-incrimination, nor does a custodian of corporate records, even if the contents tend to incriminate him or her.<sup>10</sup>

**Section 2** amends s. 624.307(10)(b), F.S., to remove the penalty on individuals for the failure to respond to a Department inquiry, and to create a duty for an entity that is licensed or issued a certificate of authority by the DFS to respond to its written requests for information. The response must include any requested documents not subject to attorney-client or work product privilege. This section also updates the duty by requiring the entity to provide any requested documents to the DFS.

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<sup>7</sup> Department of Financial Services, *Department of Financial Services Long Range Program Plan: Fiscal Years 2020-21 through 2024-25*, 15 (Sept. 30, 2019), available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=19566&DocType=PDF> (last visited Jan. 27, 2020). See also, Department of Financial Services, *Consumer Guides*, <https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/Default.htm> (last visited Jan. 27, 2020).

<sup>8</sup> Section 624.307(10)(a), F.S.

<sup>9</sup> *Saviak v. Gunter*, 379 So. 2d 450 (Fla. Dist. Ct. App. 3d Dist. 1980).

<sup>10</sup> *Eller Media Co. v. Serrano*, 761 So. 2d 464 (Fla. Dist. Ct. App. 3d Dist. 2000); *State v. Wellington Precious Metals, Inc.*, 487 So. 2d 326 (Fla. Dist. Ct. App. 3d Dist. 1986).

## **Communications between a Consumer and Insurer**

### ***Delivery of Insurance Policies and Outlines of Coverage***

Section 627.421, F.S., requires every insurance policy to be mailed, delivered, or electronically transmitted to the insured or other person entitled to the policy no later than 60 days after coverage is effectuated. Property and casualty insurance policies and endorsements that do not contain personally identifiable information may, instead, be posted on the insurer's Internet website. An insurer posting such policies and endorsements must meet certain requirements, including that the policy and all endorsements be easily accessible on the website and able to be printed and saved using readily available programs. The insured retains the right to request a free written copy of the policy and any endorsements.

Section 627.4143(3), F.S., requires delivery of a comprehensive checklist of coverage and an appropriate outline of coverage prior to the issuance of a basic homeowner, mobile home owner, dwelling, or condominium unit owner policy. The checklist of coverage must be provided using a form adopted by the Financial Services Commission. The checklist must show what coverages are and are not included in the policy, and also list the limit of liability for coverages included in the policy. The outline of coverage must contain:

- A brief description of the principal benefits and coverage provided in the policy, broken down by each class or type of coverage provided under the policy for which a premium is charged, and itemization of the applicable premium.
- A summary statement of the principal exclusions and limitations or reductions contained in the policy, including, but not limited to deductibles and coinsurance.
- A summary statement of any renewal or cancellation provisions.
- A description of the credit or surcharge plan that is being applied.
- A summary of any additional coverage provided through a rider or endorsement.

**Section 16** amends s. 627.421, F.S., to require insurers to deliver an outline of the hurricane coverage as specified in s. 627.4143(3), F.S., and the policy declarations page of their homeowners' insurance policyholders by either e-mail or an e-mail notice of information being posted to a secure web-based policy information page between March 1 and June 1 of each year.

This section is effective January 1, 2021.

### ***Communications Regarding a Claim***

Section 627.71031, F.S., provides base requirements for communications between an insurer and consumer who has notified the insurer of a possible claim. Generally, the residential property insurance company must respond to the consumer within 14 days to acknowledge the claim and provide necessary claim forms, instructions, and telephone contact information. The insurer is then required to commence an investigation within 10 days after it received proof of loss statements from the consumer. Lastly, the insurer is required to pay or deny a claim within 90 days after notice of the claim was made; if the insurer fails to make such a payment until after 90

days have passed, the payment bears interest due to the consumer. These duties generally constitute the consumer rights outlined in the Homeowner Claims Bill of Rights.<sup>11</sup>

**Section 19** amends s. 627.70131, F.S., to expand residential property insurer's and surplus lines insurer's duties to a consumer after he or she notifies the insurer of a possible claim. This section clarifies that a consumer's initial communication with an insurance company representative, not just an agent, regarding his or her claim initiates the duties outlined in this section of law. This section also expands the application of these duties to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937, F.S., providing residential coverage if coverage on the primary insured structure is less than \$700,000.

The additional duties implemented by the bill include the insurer's communication (via electronic communication or mailing) to a claimant of:

- An adjuster's name, license number, and contact information, if the insurer's claim investigation involves a physical inspection of the claimant's property;
- The name, license number, and contact information of any subsequent adjusters assigned to the consumer's claim, which must be provided within 14 days after the change;
- Specific notices when an insurer provides a preliminary or partial estimate or payment on a claim that the estimate may be revised, or the additional payments may be issued, based on the insurer's ongoing evaluation of the claim.

Additionally, an insurer must establish processes to provide a consumer's agent of record with access to the above information communicated to the consumer (specifically regarding the adjuster's report and adjuster's contact information).

Lastly, this section clarifies several timeframes applied to the insurer's communications by updating terms to either "calendar days" or "business days."

This section is effective January 1, 2021.

### ***The Homeowner Claims Bill of Rights***

The Homeowner Claims Bill of Rights (Bill of Rights) outlines consumers' rights and responsibilities as a homeowner's insurance policyholder during the insurance claims process.<sup>12</sup> An insurance company must provide a consumer with a copy of the Bill of Rights within 14 days of receiving any communication about a claim.<sup>13</sup> Florida law provides form language that the insurer must include in the Bill of Rights, which gives notice of the consumer's right to:<sup>14</sup>

- Receive written confirmation of a claim's coverage, denial, or continued investigation within 30 days of specific communication;
- Obtain full settlement payment, or partial payment on the undisputed portion of a claim, within 90 days;

<sup>11</sup> See further discussion of the Homeowner Claims Bill of Rights, *infra*.

<sup>12</sup> Florida Department of Financial Services, *Know Your Rights- Homeowner Claims Bill of Rights* (Dec. 2018), available at <https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/documents/HOABillRights.pdf> (last visited Jan. 27, 2020).

<sup>13</sup> Section 627.70131, F.S.

<sup>14</sup> Section 627.7142, F.S. These consumer rights are partially based on the insurer's duties as outlined in s. 627.70131, F.S.

- Enter mediation of a disputed claim or neutral evaluation of a claim relating to sinkhole damage; and
- Contact the Department of Financial Services for assistance.

The Bill of Rights also includes consumer advice for best practices after a loss has been incurred.

**Section 21** amends s. 627.7142, F.S., to update the Bill of Rights to better reflect the insurer's duties outlined in s. 627.70131, F.S. The Bill of Rights must now be provided within 14 days after an insurer receives an initial communication on any personal lines residential property insurance claim. The Bill of Rights must now include notice that the consumer has the right to:

- Be notified of the name and contact information of any subsequent company adjuster assigned to his or her claim;<sup>15</sup> and
- Receive interest payments, which begin accruing when a consumer files a claim, at the time of payment of the full settlement amount or undisputed claim portion. A consumer is also due interest payments if the insurer fails to deny the claim within 90 calendar days after a claim is made.<sup>16</sup>

This section also clarifies that references to days are *calendar* days.

This section is effective January 1, 2021.

### **Preferred Vendor Programs for Property Insurance**

Some property insurers maintain lists of contractors, subcontractors, and remediation specialists that the insurer classifies as preferred vendors. Some property insurers have used policy forms that provide incentives for the use of preferred vendors, such as a deductible credit.<sup>17</sup> Insurers have also used forms that allow the insurer to exercise the option to choose the contractor that will perform repairs on certain types of losses, while also providing a deductible credit.<sup>18</sup>

**Section 18** amends s. 627.7011, F.S., to provide that a list of recommended or preferred vendors may be provided to the insured for repairs to the dwelling only if requested by the insured.

### **Insurance Adjusters**

A public adjuster is hired and paid by the policyholder to act on his or her behalf in a claim the files against an insurance company. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims.<sup>19</sup>

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<sup>15</sup> This duty is created by section 18 of this bill, which amends s. 627.70131, F.S. Section 18 of this bill also requires the initial adjuster to give the consumer his or her name, license number, and contact information.

<sup>16</sup> See s. 627.70131(5)(a), F.S.

<sup>17</sup> Insurers that have used such programs include Cypress Property and Casualty Insurance Company and Elements Insurance Company.

<sup>18</sup> Insurers that have used programs that allow the insurer to select the vendor for certain claims include Heritage Property and Casualty Insurance Company and People's Trust Insurance Company.

<sup>19</sup> Section 626.854(1), F.S.

### ***Adjusting Firms***

Current law authorizes, but does not require, licensure of adjusting firms.<sup>20</sup> According to a representative of the DFS, there are currently no licensed adjusting firms. An adjusting firm license must be renewed every three years and requires a \$60 application fee.<sup>21</sup> An adjusting firm license application must include:<sup>22</sup>

- The name and address of each of the firm's majority owners, partners, officers, and directors;
- The firm's name and principal business address; and
- Any branch office locations and the names under which they will operate.

Each adjusting firm location must have a designated primary adjuster who acts as a supervising manager and is accountable for misconduct that occurs at the firm location.<sup>23</sup>

Chapter 626 provides grounds for mandatory and discretionary denial, suspension, or revocation of an adjusting firm license.<sup>24</sup>

**Section 3** amends s. 626.112, F.S., to require all adjusting firms to obtain a license from the DFS to transact adjusting in the state. However, an individual who owns and operates an adjusting firm, has a Florida adjuster license, and does not employ, appoint, or otherwise use the services of any other licensee, is not required to obtain an adjusting firm license. The adjusting firm licensure requirements instituted by this section are consistent with the requirements applicable to insurance agencies.

This section further specifies that a branch location is not required to be licensed provided that it:

- Operates under the same name and federal tax identification number of the licensed firm;
- Has a licensed primary adjuster who has been designated with the DFS; and
- Submits its address and telephone number to the DFS within 30 days after beginning to transact insurance.

This section also imposes a \$10,000 administrative penalty on adjusting firms that fail to be licensed as required by this section.

### ***Public Adjuster Contracts and Estimates of Damages***

Current law and administrative rules provide numerous restrictions and parameters on activities of public adjusters, especially relating to solicitation of contracts and inducement to contract.<sup>25, 26</sup> As an additional consumer protection, Florida law grants a policyholder a short timeframe during which he or she may cancel a contract with an adjuster without cause, penalty, or obligation. This cooling-off period permits the policy holder to cancel the contract within 3 business days of execution of the contract with an adjuster, or when the insured or claimant notifies the insurer of the claim, whichever is later. However, the cooling-off period is extended to 5 business days

<sup>20</sup> Section 626.8696, F.S.

<sup>21</sup> Section 624.501(20), F.S.

<sup>22</sup> Section 626.8696, F.S.

<sup>23</sup> Section 626.8695, F.S.

<sup>24</sup> Section 626.8697, F.S.

<sup>25</sup> Section 626.854, F.S. Laws enacted in 2008 (ch. 2008-220, Laws of Fla.), in 2009 (ch. 2009-87, Laws of Fla.), 2011 (ch. 2011-39, Laws of Fla.), and 2017 (ch. 2017-147, Laws of Fla.), provided significant changes relating to public adjusters.

<sup>26</sup> Rule 69B-220.201(4) and (5), F.A.C.

from the date the contract was executed, if it was entered into during a state of emergency or during the 1-year period after the date of loss.

The adjuster must disclose in all of his or her contracts the consumer's right to cancel the contract, and the methods by which the consumer may send a cancellation.

Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the submission of the insurance claim. The public adjuster must retain the estimate for at least 5 years and make it available to the claimant, insured, an insurer, or the DFS upon request.

**Section 10** amends s. 626.854, F.S., to increase the duration of the cooling-off period during which a consumer may cancel his or her contract with an adjuster. Generally, the bill increases the cooling-off period from 3 business days to 7 calendar days. However, for contracts signed during a state of emergency or during the 1-year period after the date of loss, the bill increases the cooling-off period to 14 calendar days.

The bill also specifies that the public adjuster's written estimate of loss must include an itemized, per-unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies that is created in accordance with accepted industry standards. If a public adjuster does not provide the estimate within 45 days of the execution of the public adjuster contract, the insurer may cancel the contract without penalty or obligation until the public adjuster submits the estimate.

A public adjuster's contract entered into during a state of emergency or during the 1-year period after the date of loss must include notice of the right to cancel the contract without penalty or obligation during the 14 day cooling-off period, the public adjuster's obligation to provide an itemized estimate of loss within 45 days, and the right to cancel the contract without penalty or obligation if the estimate is not provided within 45 days.

### **Misleading Insurance Agency Names**

The DFS may withhold permission to operate under an agency name if the name is too similar to another already in use by a different agency; the name may mislead the public; or the name states or implies that the agency is an entity other than an insurance agency, such as an insurer, state or federal agency, or charitable organization.<sup>27</sup>

The Social Security Act prohibits any person from using the terms "Medicare" or "Medicaid" in an advertisement or other communication in a manner which the person knows, or should know, would convey the false impression that the communication is approved by the Centers for Medicare & Medicaid Services.<sup>28</sup>

There are currently 85 insurance agencies licensed in Florida whose agency names contain the words "Medicare," or "Medicaid."<sup>29</sup>

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<sup>27</sup> Section 626.602(1)-(3), F.S.

<sup>28</sup> 42 U.S. Code s.1320b-10(a)(1). Upheld by *United Seniors Ass'n Inc. v. SSA*, 423 F. 3d 397, 399 (4<sup>th</sup> Cir. 2005).

<sup>29</sup> Department of Financial Services, *Licensee Search*, <https://licenseesearch.fldfs.com/> (enter "Medicare" or "Medicaid" in "Agency/Firm Name" field, then click "search") (last visited Jan. 27, 2020).

**Section 4** amends s. 626.602, F.S., to authorize the DFS to disapprove an insurance agency's proposed use of a name that includes the words "Medicare" or "Medicaid." Insurance agencies that operate under such a name as of July 1, 2020, may continue to use the names, but if the license expires or is suspended or revoked, the agency may not be relicensed under that name.<sup>30</sup>

### **Administrative Penalties and Grounds to Refuse a License**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law that protects individual's health information from certain disclosures when it is held by health care providers and health insurance companies.<sup>31</sup> Additionally, s. 456.057, F.S., provides that patient records, when held by a healthcare professional, must not be disclosed without the consent of the patient or his or her legal representative. Neither HIPAA nor the state provision apply to insurance licensees.

The Florida Telemarketer Act, ss. 501.601-501.626, F.S., prohibits commercial telephone solicitations before 8 a.m. or after 9 p.m. However, insurers and their subsidiaries and affiliates are exempt from this law.<sup>32</sup> Similarly, the Federal Trade Commission's Telemarketing Sales Rule prohibits telemarketing calls before 8 a.m., or after 9 p.m.<sup>33</sup>

Currently, Florida law prohibits public adjusters from soliciting an insured before 8 a.m. and after 8 p.m. on Monday through Saturday, and completely prohibits any solicitations on Sunday.<sup>34</sup>

**Section 5** amends s. 626.621, F.S., to add two bases for which the DFS may suspend or revoke the license of an insurance agent, adjuster, customer representative, service representative, or managing general agent, or refuse to issue a license to an applicant:

- Taking an action that allows a consumer's or customer's personal financial or medical information to be made available or accessible to the public; and
- Initiating in-person or telephone solicitation with a prospective customer after 9 p.m. or before 8 a.m., unless the customer requests otherwise.

### **License Suspension for Title Agents and Title Agencies**

**Section 9** amends s. 626.8443, F.S., to increase a title agent or title agency's permitted suspension period from 1 year to 2 years. This conforms the suspension period to those applicable to insurance agents,<sup>35</sup> and bail bond agents.<sup>36</sup>

<sup>30</sup> Insurance agency licenses are indefinite. Section 626.382, F.S.

<sup>31</sup> U.S. Department of Health and Human Services, *Your Health Information Privacy Rights*, available at [https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/consumers/consumer\\_rights.pdf](https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/consumers/consumer_rights.pdf) (last visited Jan. 27, 2020).

<sup>32</sup> Section 501.604(7), F.S.

<sup>33</sup> Federal Trade Commission, *The Telemarketing Sales Rule*, <https://www.consumer.ftc.gov/articles/0198-telemarketing-sales-rule> (last visited Jan. 27, 2020).

<sup>34</sup> Section 626.854(5), F.S.

<sup>35</sup> Section 626.641, F.S. *See also*, Rule 69B-231, Laws of Fla.

<sup>36</sup> Section 648.45, F.S. *See also*, Rule 69B-241, Laws of Fla.

A suspended licensee may not engage in the transaction of business that requires a license. After the duration of the suspension, an individual or entity with a suspended license may request to have the license reinstated by the Department, rather than undergo the licensing process in the same manner as a first-time applicant, as is required after a license revocation.<sup>37</sup>

### **Unfair Insurance Trade Practices**

The Unfair Insurance Trade Practices Act<sup>38</sup> prohibits unfair methods of competition and unfair or deceptive acts in the business of insurance,<sup>39</sup> including:

- Misrepresenting the benefits, advantages, or terms of any insurance policy;
- Inducing the lapse or exchange of any insurance policy, generally so the agent can earn a commission on a replacement policy; and
- Providing more insurance coverage than a consumer requests or consents to, while also failing to inform the consumer that the additional coverage was optional (“sliding”).<sup>40</sup>

A person who commits acts prohibited by the Unfair Insurance Trade Practices Act is generally subject to a fine of up to \$20,000 for nonwillful violations, and up to \$200,000 total for willful violations.<sup>41</sup> However, specific violations are subject to greater administrative penalties and are also punishable as criminal misdemeanors.<sup>42</sup>

Additionally, a person who willfully submits fraudulent signatures on an application or policy-related document commits a third-degree felony, which is also punishable by the assessment of administrative fines of no more than \$75,000 per violation.<sup>43</sup>

**Section 12** amends s. 626.9541, F.S., to expand the definition of sliding, a practice that violates the Unfair Insurance Trade Practices, to include:

- Initiating, effectuating, binding, or otherwise issuing an insurance policy without the prior informed consent of the person who owns the property that will be insured; and
- Mailing, transmitting, or otherwise submitting an invoice for premium payment to a mortgagee or escrow agent in order to institute an insurance policy without the prior informed consent of the owner of the property that will be insured. However, it does not include cases where the mortgagee or escrow agent is renewing insurance or issuing collateral protection insurance pursuant to the mortgage or other pertinent loan documents or communications regarding the property.

These new violations will be punishable as administrative violations under the general provisions of the Unfair Insurance Trade Practices Act. However, the underlying acts that give rise to those administrative violations may also give rise to charges under s. 626.9541(1)(ee), F.S., which

<sup>37</sup> Section 626.641(2), F.S.

<sup>38</sup> Chapter 626, F.S., part IX, ss. 626.951-626.99, F.S.

<sup>39</sup> Section 626.9541, F.S.

<sup>40</sup> Section 626.9541(1)(z), F.S. *See also, Beckett v. Department of Financial Services*, 982 So. 2d 94 (Fla. 1<sup>st</sup> DCA).

<sup>41</sup> Each count of a nonwillful violation is limited to a fine of no more than \$5,000, and each count of a willful violation is limited to a fine of no more than \$20,000. Section 626.9521(2), F.S.

<sup>42</sup> *See, e.g.*, Section 626.9521(3)(a), F.S., which makes the offenses of twisting and churning, which must involve fraudulent conduct, punishable as a first degree misdemeanor.

<sup>43</sup> Section 626.9521(3)(b), F.S.

prohibits the willful submission of fraudulent signatures on an application or policy-related document, and is punishable as a third-degree felony pursuant to s. 626.9521, F.S.

### **Criminal Penalties for Aiding and Abetting Unlicensed Insurance Activity**

**Section 3** adds a criminal penalty, applicable to any person who helps an unlicensed person transact insurance or engage in insurance activities in Florida. These violations are punishable as third-degree felonies.<sup>44</sup>

**Section 23** amends s. 648.30, F.S., to extend the third-degree felony penalty for unlicensed bail bond activity to those who are licensed under ch. 648, F.S., and who knowingly aid and abet an unlicensed person commit unlicensed bail bond activity,<sup>45</sup> in violation of s. 648.30, F.S.

### **Industrial Life Insurance**

Industrial life insurance is a form of life insurance in which the premiums are payable on a monthly or weekly basis. These policies usually have a face amount of less than \$5,000.<sup>46</sup> Only 38 of the 398 active life insurers maintain existing industrial life insurance policies, and no new industrial life insurance policies have been written in the last year.<sup>47</sup>

**Sections 6-8 and 17** end the sale of industrial life insurance in Florida by prohibiting life insurers from writing a new policy of industrial life insurance beginning July 1, 2020, and otherwise removing language that allows insurance companies to transact industrial life insurance policies. However, these sections do permit the continued collection of premiums on, and servicing of such policies that were written before July 1, 2020.

### **Surplus Lines Export Eligibility**

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.<sup>48</sup> There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks that are risks where an insured needs higher coverage limits than those that are available in the admitted market.

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<sup>44</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>45</sup> Unlicensed bail bond activity violative of s. 648.30, F.S., generally consists of representing oneself as a Florida bail bond agent or attempting to detain or arrest an individual on a bond, without proper licensure.

<sup>46</sup> Section 627.502, F.S. *See also*, Department of Financial Services, *Life Insurance Overview: Types of Policies*, <https://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/LifeInsuranceOverview.htm> (last visited Jan. 27, 2020).

<sup>47</sup> Florida Department of Financial Services, *SB 1492 Agency Analysis*, 3 (Jan. 15, 2020), (on file with the Senate Committee on Commerce and Tourism).

<sup>48</sup> The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. Section 626.921, F.S. *See also*, Florida Surplus Lines Service Office, *What is Surplus Lines Insurance?*, <https://www.fslso.com/AboutGroup/about/surplus-lines-insurance> (last visited Jan. 27, 2020).

Surplus lines insurers are not “authorized” insurers as defined in the Florida Insurance Code,<sup>49</sup> which means they do not obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact insurance in Florida.<sup>50</sup> Rather, surplus lines insurers are “unauthorized” insurers,<sup>51</sup> but may transact surplus lines insurance if they are made eligible by the OIR.

An insurance agent<sup>52</sup> may “export,” or place a policy with an unauthorized insurer under the Surplus Lines Law, with the consent of the insurance applicant. Before an insurance agent can place insurance in the surplus lines market, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers.<sup>53</sup> A “diligent effort” requires a search for coverage that is ultimately denied by at least three authorized insurers in the admitted market. Additionally, the insurance agent must document the following before exporting the policy to the surplus lines market:<sup>54</sup>

- The premium rate for policies written by a surplus lines insurer cannot be less than the premium rate used by a majority of authorized insurers for the same coverage on similar risks;
- The policy exported cannot provide coverage or rates that are more favorable than those that are used by the majority of authorized insurers actually writing similar coverages on similar risks;
- The deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm; and
- For personal residential property risks,<sup>55</sup> the policyholder must be advised in writing that coverage may be available and less expensive from Citizens Property Insurance Corporation (Citizens).

Certain types of insurance, deemed “commercial risks,” including medical malpractice, travel, general liability, errors and omissions, and excess or umbrella insurance coverage, are exempt from the above diligent effort requirement. An insured for these commercial risks must sign a disclosure that provides, in substantially the following form:

You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer.<sup>56</sup>

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<sup>49</sup> Section 626.914(2), F.S.

<sup>50</sup> Section 624.09(1), F.S.

<sup>51</sup> Section 624.09(2), F.S.

<sup>52</sup> Typically, the applicant’s usual insurance agent works with the surplus lines agent to arrange the placement, rather than the applicant working directly with the surplus lines agent. A surplus lines agent requires separate licensure than a traditional insurance agent, and is permitted to secure insurance coverages with unauthorized insurers whereas traditional insurance agents are not. *See* s. 626.914(1), F.S.

<sup>53</sup> Section 626.916(1)(a), F.S.

<sup>54</sup> Section 626.916(1), F.S.

<sup>55</sup> Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

<sup>56</sup> Section 626.916(3)(b), F.S.

**Section 11** amends s. 626.916, F.S., to extend the disclosure requirement found in s. 626.916(3)(b)3., F.S., to all insurance policies that are exported into the surplus lines market, rather than just commercial risks.

Additionally, the bill clarifies that the insureds who seek to export the commercial risks listed in s. 626.916(3)(b), F.S., must have signed the disclosure *prior to* the policy's export.

This section is effective January 1, 2021.

### **Forum Selection Clauses Prohibition**

A forum selection clause is a contractual provision in which the parties agree upon the venue for possible future litigation between them.<sup>57</sup> Generally, ch. 47, F.S., provides that civil actions must be brought in the Florida county where the defendant resides, where the cause accrued, or where the property in question is located.<sup>58</sup> If the defendant is an out-of-state (foreign) corporation, venue resides where the corporation has a representative, the action accrued, or where the property is located.<sup>59</sup> However, “a mandatory forum selection clause must be enforced unless it is shown to be unreasonable or unjust.”<sup>60</sup> In 2014, the Legislature codified case law on the matter, holding that a court could refuse to enforce a forum selection clause if it contravenes public policy, or is unjust and unreasonable.<sup>61</sup>

Several states, including Florida, have attempted to limit forum selection clauses in specific instances. Florida voids as contrary to public policy any contracts that require litigation against Florida contractors and related professions to be filed in non-Florida jurisdictions.<sup>62</sup>

**Section 20** creates s. 627.7031, F.S., which prohibits property insurers from including any clause in their property insurance policies sold to Florida consumers after July 1, 2020, that requires an insured to pursue litigation, arbitration, or mediation outside of Florida. This prohibition also applies to surplus lines insurers and any policies exported to a surplus lines insurer pursuant to ss. 626.913-937, F.S.

### **Florida Insurance Guaranty Association**

The Florida Insurance Guaranty Association (FIGA) is a not-for-profit corporation created by statute that steps into the shoes of insolvent insurers to timely pay certain property and casualty claims<sup>63</sup> that would otherwise be left unpaid.<sup>64</sup> FIGA does not offer a replacement policy, and

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<sup>57</sup> Black's Law Dictionary (11<sup>th</sup> ed. 2019).

<sup>58</sup> Section 47.011, F.S.

<sup>59</sup> Section 47.051, F.S.

<sup>60</sup> *Illinois Union Ins. Co. v. Co-Free, Inc.*, 128 So.3d 820, 821 (Fla. 1<sup>st</sup> DCA 2014) (citing *Land O'Sun Mgmt. Corp. v. Commerce and Indus. Ins. Co.*, 961 So. 2d 1078, 1080 (Fla 1<sup>st</sup> DCA 2007). Internal citations omitted.

<sup>61</sup> Section 61.0401, F.S. See also, *Manrique v. Fabbri*, 493 So. 2d 437 (Fla. 1986) and *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. Of Texas*, 571 U.S. 49, 134 S. Ct. 568 (2013).

<sup>62</sup> Section 47.025, F.S.

<sup>63</sup> A “covered claim” is an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy.” Section 631.54, F.S.

<sup>64</sup> See generally, Part II, ch. 631, F.S., “Florida Insurance Guaranty Association Act.” See also, Florida Insurance Guaranty Association, Home, <https://figafacts.com/> (last visited Jan. 27, 2020).

coverage offered by FIGA is generally limited to a \$300,000 payment. A consumer may receive additional FIGA coverage of up to \$200,000 for damages to their home's structure or the contents thereof.<sup>65</sup> Condominium and homeowner's association claims have a coverage cap of \$100,000 multiplied by the number of units in the association.<sup>66</sup> All claims filed with FIGA are subject to a \$100 deductible in addition to any deductible identified in the consumer's policy.<sup>67</sup>

**Section 22** amends s. 631.57, F.S., to remove the consumer's obligation to pay a \$100 deductible to FIGA in order to receive payment on their claim through FIGA. The consumer will still be obligated to pay their original insurer's deductible, however.

### **Division of Unclaimed Property**

The DFS administers the Florida Disposition of Unclaimed Property Act. Unclaimed property is a financial asset that is unclaimed or abandoned by its owner.<sup>68</sup> Unclaimed property may include savings and checking accounts, securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.<sup>69</sup> The DFS Division of Unclaimed Property is responsible for receiving property, attempting to locate its rightful owners, returning the property or proceeds to them, and managing the Unclaimed Property Trust Fund.<sup>70</sup> There is no statute of limitations and individuals may claim their property at any time and at no cost.<sup>71</sup>

Florida law allows Florida-licensed private investigators, certified public accountants, and attorneys to serve as claimant's representatives who solicit unclaimed property owners or their heirs to help them recover their property for a fee.<sup>72</sup> There are currently over 350 claimant's representatives registered with the Department.<sup>73</sup> The claimant's representatives may not charge a fee in excess of 20 percent of the account's value, up to \$1,000 maximum per account, unless the claimant's representative discloses that the property is held by the Division of Unclaimed Property, and gives the Division's contact information, along with other pertinent information about the property.<sup>74</sup>

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<sup>65</sup> Section 631.57(2), F.S.

<sup>66</sup> Section 631.57(3), F.S.

<sup>67</sup> Section 631.57(2), F.S., *see also*, Florida Insurance Guaranty Association, *Frequently Asked Questions: Are There Limits on the Amount that FIGA Will Pay?*, <https://figafacts.com/frequently-asked-questions/> (last visited Jan. 27, 2020).

<sup>68</sup> Florida Department of Financial Services, *Florida Treasure Hunt: Why Should I Search for Unclaimed Property?*, <https://www.fltreasurehunt.gov/UP-Web/sitePages/About.jsp> (last visited Jan. 27, 2020).

<sup>69</sup> Sections 717.104-717.116, F.S. *See also*, Department of Financial Services, *Florida Unclaimed Property*, <https://www.myfloridacfo.com/Division/UnclaimedProperty/> (last visited Jan. 27, 2020).

<sup>70</sup> Department of Financial Services, *Department of Financial Services Long Range Program Plan: Fiscal Years 2020-21 through 2024-25*, 14 (Sept. 30, 2019), available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=19566&DocType=PDF> (last visited Jan. 27, 2020).

<sup>71</sup> Section 717.124, F.S., provides the methods by which a person may claim his or her interest from the Division of Unclaimed Property. *See also*, Florida Department of Financial Services, *Florida Treasure Hunt: Search for and Claim Unclaimed Property*, <https://www.fltreasurehunt.gov/UP-Web/sitePages/FAQs.jsp> (last visited Jan. 27, 2020).

<sup>72</sup> Florida Department of Financial Services, *Florida Treasure Hunt: Have You Been Contacted About Unclaimed Property?* <https://fltreasurehunt.gov/Contacted-by-Unclaimed-Property.jsp> (last visited Jan. 27, 2020).

<sup>73</sup> Florida Department of Financial Services, SB 1492 Agency Analysis at 4 (Jan. 21, 2020) (on file with the Committee on Commerce and Tourism).

<sup>74</sup> Section 717.135(2), F.S.

Alternatively, a Florida-licensed private investigator, certified public accountant, or attorney may offer to purchase the unclaimed property and pay the seller an agreed upon amount upfront.<sup>75</sup> In this case, the purchaser must pay the agreed upon percentage or amount within 30 days of the contract's execution by the seller, and must provide proof of that payment to the DFS with the claim.<sup>76</sup> The disclosure and contract requirements are substantially similar to the claimant's representative process, except that the seller's identity must be verified by submission of a copy of a valid driver's license, photo I.D., or notarized sworn statement which affirms the seller's identity, full name, and address. Submission of a social security number or taxpayer identification number are only required if that information is available.

Before a claimant's representative or unclaimed property purchaser may execute a power of attorney or purchase agreement, he or she must disclose the following in a separate document to the property owner, and obtain the owner's signed acknowledgement thereof:

- That the property is held by the Division of Unclaimed Property (and the mailing and internet address of the Division);
- Who remitted the property to the Division, and when that last point of contact occurred; and
- The category the property falls under (e.g., cash account, life insurance or annuity contract asset, utility deposit, wages, or contents of safe-deposit boxes).

The power of attorney or purchase agreement must include the:

- Value of the unclaimed property (or approximate value);
- Unclaimed property account number;
- Percentage value of the unclaimed property to be paid to the claimant, if applicable;
- Percentage value of the compensation to be made to the claimant's representative;
- Number of shares of stock, if applicable;
- Claimant's taxpayer identification number or social security number, address, and telephone number;
- Name and address to whom payment shall be made, if different than the claimant's name and address; and
- Claimant's representative's contact information, including his or her:
  - Professional license number,
  - Firm or employer's name, address, and telephone number; and
  - Name, address, and telephone number.

Additionally, the power of attorney or purchase agreement must be a separate document from the disclosure.

**Section 28** substantially amends s. 717.315, F.S., to replace the power of attorney and acquisition of unclaimed property forms used by claimant's representatives with the "Florida Uniform Unclaimed Property Recovery Agreement" (uniform recovery agreement) and the "Florida Uniform Property Purchase Agreement" (uniform purchase agreement), respectively (uniform agreements, jointly). The bill prohibits a claimant's representative from engaging with a claimant or seller to file a claim with the DFS by any means other than the uniform agreement forms and declares any agreement not authorized by s. 717.135, F.S., null and void.

<sup>75</sup> Section 717.1351, F.S.

<sup>76</sup> Section 717.1351(4), F.S.

The uniform agreements require substantially the same information as the power of attorney and disclosure or purchase agreement and disclosure, but combine the forms, and otherwise add the following information requirements:

- A statement of the total dollar amount that will be paid to the claimant's representative, based on the fee or deduction percentage quoted;
- The total dollar amount the claimant will receive, after the above fees or deductions have been subtracted; and
- The claimant's representative's e-mail address.

The bill explicitly states that the uniform agreements may not contain language that either makes the contract irrevocable, or creates an assignment of unclaimed property held by the DFS. As an additional consumer protection, the bill clarifies that fees and costs may only be owed or paid pursuant to the uniform agreements and upon approval of the claim filed thereby (thus limiting the overall fees to 20 percent).

The bill allows the DFS to pay out the value of any account that was not claimed at the time that it approved another of the consumer's claim, if no subsequent claim was filed.

Lastly, the bill directs the DFS to adopt rules to amend its forms to reflect the uniform agreements required disclosures.

**Section 29** repeals s. 717.1351, F.S., regarding acquisition of unclaimed property. This process is replaced by the newly created Florida Uniform Property Purchase Agreement, which is created by section 28 of this bill.

**Sections 24-27** make conforming changes to ss. 717.124, 717.12404, 717.1315, and 717.1322, F.S., respectively, to reflect the adoption of the uniform agreements.

#### **Miscellaneous**

**Section 3** deletes unnecessary language from s. 626.112(7), F.S.

**Sections 14 and 15** update cross-references in ss. 626.9957 and 627.062, F.S., respectively.

**Section 30** provides that, except as otherwise provided, 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:

The bill requires adjusting firms to become licensed, which subjects them to a \$60 application fee. To the extent the bill imposes a fee on adjusting firms while addressing other subjects, the bill may be unconstitutional as a violation the single-subject requirement for the imposition, authorization, or raising of a state tax or fee under article VII, section 19 of the Florida Constitution. Under that section, a “state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject.” A “fee” is defined by the Florida Constitution to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”<sup>77</sup>

E. Other Constitutional Issues:

Section 5 may benefit from further definition of its terms. Agencies generally have wide discretion in interpreting statutes they administer, but “this discretion is somewhat more limited where the statute being interpreted authorizes sanctions or penalties against a person’s professional license.”<sup>78</sup> Statutes that provide for the revocation or suspension of a license to practice are deemed penal in nature and must be strictly construed, with any ambiguity interpreted in favor of the licensee.<sup>79</sup> However, if it is found that the law fails to give a person of ordinary intelligence fair notice of what constitutes forbidden conduct, it may be determined to be void for vagueness.<sup>80</sup>

The DFS’ restriction on engagement with a claimant or seller of unclaimed property may implicate an issue regarding restrictions of commercial speech. The Constitution accords a lesser protection to commercial speech than to other constitutionally protected expression.<sup>81</sup> In fact, the government may ban forms of commercial communication that are more likely to deceive the public than to inform it, but if commercial communication is not misleading or related to unlawful activity, the government’s power to restrict such communication must be supported by a substantial interest, and the limit must be in proportion to that interest.<sup>82</sup> This is generally expressed as a two-part test asking: (1) does the restriction directly advance the state interest involved, and (2) could the governmental interest be served as well by a more limited restriction?

<sup>77</sup> FLA. CONST. art. VII, s. 19(d)(1)

<sup>78</sup> *Beckett v. Department of Financial Services*, 982 So.2d 94, 100 (Fla. 1<sup>st</sup> DCA 2008) (quoting *Elmariah v. Department of Professional Regulation, Board of Medicine*, 574 So.2d 164, 165 (Fla. 1<sup>st</sup> DCA 1990)).

<sup>79</sup> *Tuberville v. Department of Financial Services*, 248 So.3d 194, 196 (Fla 1<sup>st</sup> DCA 2018).

<sup>80</sup> *Accelerated Benefits Corp v. Department of Insurance*, 813 So.2d 117 (Fla 1<sup>st</sup> DCA 2002) (internal citations omitted).

<sup>81</sup> U.S. CONST., amends. I, XIV. *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 564 (1980).

<sup>82</sup> *Id.*

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

None.

**B. Private Sector Impact:**

Credit Bureaus will no longer be permitted to charge a fee to re-issue a PIN to consumers.

Consumers who seek to have their claims covered by FIGA will no longer be required to pay the \$100 deductible to FIGA.

Certain property adjusting businesses will be required to become licensed by the DFS and pay related application fees; those who fail to submit an application for licensure will be subject to administrative penalties.

Consumers may benefit from the extended cooling-off period, which allows them to void a contract for public adjusting services without penalty.

Certain licensees may be subject to administrative or criminal penalties as a result of the additional penalties created by this bill.

Insurers will be prohibited from selling industrial life insurance policies, although this should have a de minimis impact, as few currently offer this type of policy.

Insurers and certain agents may be required to update forms or mailers to reflect the new surplus lines export disclosure, the hurricane disclosure, the updated homeowner claims bill of rights, and the prohibition of forum selection clauses.

The inclusion of all required information in one uniform agreement may equip an unclaimed property claimant with more information prior to entering into an agreement. This may protect the consumer from entering into predatory or unfair contracts to retrieve their unclaimed property.

**C. Government Sector Impact:**

The DFS will be required to update certain forms and brochures to reflect the amended version of the Homeowner Claims Bill of Rights.

The DFS will likely see an increase in adjusting firm applications as a result of this bill; this will result in an increased licensing workload.

Section 28 requires the DFS to promulgate rules that adopt the uniform agreements relating to unclaimed property.

**VI. Technical Deficiencies:**

Section 3 of the bill requires entities to comply with s. 626.8696, F.S., to act as an adjusting firm. Section 626.8696, F.S., outlines the requirements for submitting an application for an adjusting firm license, but does not give licensing requirements. This may be interpreted as requiring adjusting firms only to submit an application (not wait for approval, or even meet approval from the DFS) to comply with s. 626.112, F.S., as amended by the bill. Similarly, section 3 of the bill merely requires an adjusting firm to file an application for licensure to avoid a penalty assessed by the DFS.

Section 18 of the bill provides that a list of recommended or preferred vendors may be provided to the insured for repairs to the dwelling only if requested by the insured. This may result in some policyholders paying more for repairs because some insurance policies provide inducements to use a preferred vendor, such as a partial deductible credit. If the property insurance policy allows the insurer to elect to repair the property using preferred vendors, it is unclear what the effect of this section will have on the insurer's ability to notify the policyholder.

Section 19 and section 21 both generally update references of "days" to "calendar days" or "business days;" however, both sections also leave at least one reference to only "days." This inconsistency may cause confusion about whether a "day" is a calendar or business day.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 501.0051, 624.307, 626.112, 626.602, 626.621, 626.782, 626.783, 626.8443, 626.854, 626.916, 626.9541, 626.9741, 626.9957, 627.062, 627.421, 627.502, 627.7011, 627.70131, 627.7142, 631.57, 648.30, 717.124, 717.12404, 717.1315, 717.1322, and 717.135.

This bill creates section 627.7031 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 626.796 and 717.1351.

**IX. Additional Information:**

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

**CS by Rules on February 26, 2020:**

The CS retains the provisions of the underlying bill, but with the following changes:

- Clarifies that insurers are not required to provide documents to DFS consumer services that are subject to attorney-client or work-product privilege.
- Provides a 14 calendar day right of rescission for public adjuster contracts during a state of emergency or during the 1-year period after the date of loss and for contracts entered into during other times provides a rescission period of 7 calendar days;

current law provides rescission periods of 5 business days and 3 business days, respectively.

- Requires the public adjuster provide the written estimate of a property insurance loss within 45 days and that failure to provide the estimate allows the cancellation of the contract with the public adjuster; also requires that the estimate include an itemized, per-unit estimate of repairs in accordance with accepted industry standards.
- Revises the notice created by the bill that must be provided prior to the placement of coverage with a surplus lines insurer.
- Provides that the bill's prohibition of invoicing a mortgagee or escrow agent for the purpose of making an insurance policy without the policyholder's consent does not apply to renewing insurance or issuing force-placed collateral protection insurance.
- Requires property insurers to email an outline of hurricane coverage prior to hurricane season.
- Requires notice to the policyholder within 14 days after a change in adjuster.
- Deletes a provision requiring the insurer to provide the policyholder an unedited copy of the adjuster's report.
- Provides that a property insurer may only provide a list of recommended or preferred vendors if requested by the insured.
- Specifies that the bill's application of s. 627.70131, F.S., to surplus lines property insurers applies to residential policies with a policy limit less than \$700,000. Section 627.70131, F.S., requires property insurers to promptly adjust property insurance claims and promptly respond to communications.
- Specifies that the bill's prohibition on foreign venue clauses applies to personal residential property insurance.
- Makes additional technical and clarifying changes.

**B. Amendments:**

None.



268682

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/25/2020	.	
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The Committee on Rules (Flores) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 426 and 427  
insert:

Section 18. 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



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12 the actual cash value of the insured loss, less any applicable  
13 deductible. The insurer shall pay any remaining amounts  
14 necessary to perform such repairs as work is performed and  
15 expenses are incurred. If a total loss of a dwelling occurs, the  
16 insurer shall pay the replacement cost coverage without  
17 reservation or holdback of any depreciation in value, pursuant  
18 to s. 627.702. A list of recommended or preferred vendors may be  
19 provided to the insured for repairs to the dwelling, if  
20 requested by the insured.

21  
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete line 55

25 and insert:

26 beginning on a certain date; amending s. 627.7011,  
27 F.S.; providing that an insurer issuing a homeowner's  
28 policy with certain coverage may provide the insured a  
29 list of recommended or preferred vendors for repairs  
30 to the dwelling, if requested by the insured; amending  
31 s. 627.70131,



730048

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2020	.	
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The Committee on Rules (Wright) recommended the following:

1           **Senate Amendment to Amendment (957714) (with title**  
2 **amendment)**

3  
4           Delete lines 146 - 176

5 and insert:

6           Section 10. Subsections (6) and (11) of section 626.854,  
7 Florida Statutes, are amended to read:

8           626.854 "Public adjuster" defined; prohibitions.—The  
9 Legislature finds that it is necessary for the protection of the  
10 public to regulate public insurance adjusters and to prevent the  
11 unauthorized practice of law.



730048

12           (6) Except during a state of emergency declared by the  
13 Governor and except during the 1-year period after the date of  
14 loss, an insured or claimant may cancel a public adjuster's  
15 contract to adjust a claim without penalty or obligation within  
16 7 calendar ~~3 business~~ days after the date on which the contract  
17 is executed ~~or within 3 business days after the date on which~~  
18 ~~the insured or claimant has notified the insurer of the claim,~~  
19 ~~whichever is later.~~ During a state of emergency declared by the  
20 Governor or during the 1-year period after the date of loss, an  
21 insured or a claimant may cancel a public adjuster's contract to  
22 adjust a claim without penalty or obligation within 14 calendar  
23 days after the date on which the contract is executed. The  
24 public adjuster's contract must disclose to the insured or  
25 claimant his or her right to cancel the contract and advise the  
26 insured or claimant that notice of cancellation must be  
27 submitted in writing and sent by certified mail, return receipt  
28 requested, or other form of mailing that provides proof thereof,  
29 to the public adjuster at the address specified in the contract.  
30 Any public adjuster's contract entered into pursuant to a state  
31 of emergency or during the 1-year period after the date of a  
32 loss caused by the state of emergency must contain the following  
33 language in minimum 18-point bold type: "You, the insured, may  
34 cancel this contract for any reason without penalty or  
35 obligation to you within 14 days after the date of this contract  
36 by providing notice to ...(name of public adjuster)...,  
37 submitted in writing and sent by certified mail, return receipt  
38 requested, or other form of mailing that provides proof thereof,  
39 at the address specified in the contract. In addition, if  
40 ...(name of public adjuster)... fails to provide you with a



730048

41 written estimate (which must include an itemized, per-unit  
42 estimate of the repairs, including itemized information on  
43 equipment, materials, labor, and supplies, in accordance with  
44 accepted industry standards) within 45 days after the date of  
45 this contract, you, the insured, may cancel this contract with  
46 ...(name of public adjuster)... without penalty or obligation by  
47 providing notice as set forth above. This right to cancel the  
48 contract without penalty or obligation shall continue until such  
49 time as ...(name of public adjuster)... submits the required  
50 estimate to you.”; ~~provided, during any state of emergency as~~  
51 ~~declared by the Governor and for 1 year after the date of loss,~~  
52 ~~the insured or claimant has 5 business days after the date on~~  
53 ~~which the contract is executed to cancel a public adjuster’s~~  
54 ~~contract.~~

55 (11) Each public adjuster must provide to the claimant or  
56 insured a written estimate of the loss to assist in the  
57 submission of a proof of loss or any other claim for payment of  
58 insurance proceeds. The written estimate must include an  
59 itemized, per-unit estimate of the repairs, including itemized  
60 information on equipment, materials, labor, and supplies, in  
61 accordance with accepted industry standards. The public adjuster  
62 shall retain such written estimate for at least 5 years and  
63 shall make the estimate available to the claimant or insured,  
64 the insurer, and the department upon request. Failure to provide  
65 the required estimate within 45 calendar days after the date on  
66 which the contract is executed shall restore the insured’s right  
67 to cancel the public adjuster’s contract without penalty or  
68 obligation. The insured retains such right until such time as  
69 the public adjuster submits the required estimate.



730048

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81

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

And the title is amended as follows:

Delete line 963

and insert:

without penalty or obligation; requiring that certain  
public adjuster's contracts include a specified  
disclosure; specifying requirements for written  
estimates of loss provided by public adjusters to  
claimants or insureds; providing construction relating  
to the failure to provide the required estimate;  
amending s. 626.916,



292600

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2020	.	
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The Committee on Rules (Flores) recommended the following:

1           **Senate Amendment to Amendment (957714) (with title**  
2 **amendment)**

3  
4           Between lines 325 and 326  
5 insert:

6           Section 18. Paragraph (a) of subsection (3) of section  
7 627.7011, Florida Statutes, is amended to read:

8           627.7011 Homeowners' policies; offer of replacement cost  
9 coverage and law and ordinance coverage.—

10           (3) In the event of a loss for which a dwelling or personal  
11 property is insured on the basis of replacement costs:



292600

12 (a) For a dwelling, the insurer must initially pay at least  
13 the actual cash value of the insured loss, less any applicable  
14 deductible. The insurer shall pay any remaining amounts  
15 necessary to perform such repairs as work is performed and  
16 expenses are incurred. If a total loss of a dwelling occurs, the  
17 insurer shall pay the replacement cost coverage without  
18 reservation or holdback of any depreciation in value, pursuant  
19 to s. 627.702. A list of recommended or preferred vendors may be  
20 provided to the insured for repairs to the dwelling only if  
21 requested by the insured.  
22

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

24 And the title is amended as follows:

25 Delete line 979

26 and insert:

27 beginning on a certain date; amending s. 627.7011,  
28 F.S.; providing that an insurer issuing a homeowner's  
29 policy with certain coverage may provide the insured a  
30 list of recommended or preferred vendors for repairs  
31 to the dwelling only if requested by the insured;  
32 amending s. 627.70131,



957714

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/04/2020	.	
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The Committee on Banking and Insurance (Wright) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (b) of subsection (9) of section  
501.0051, Florida Statutes, is amended to read:

501.0051 Protected consumer report security freeze.-

(9)

(b) A consumer reporting agency may not charge to a  
~~reasonable fee, not to exceed \$10, if the representative fails~~



957714

11 ~~to retain the original unique personal identifier provided by~~  
12 ~~the consumer reporting agency and the agency must~~ reissue the  
13 unique personal identifier or provide a new unique personal  
14 identifier to the consumer representative.

15 Section 2. Paragraph (b) of subsection (10) of section  
16 624.307, Florida Statutes, is amended to read:

17 624.307 General powers; duties.-

18 (10)

19 (b) Any entity ~~person~~ licensed or issued a certificate of  
20 authority by the department or the office shall respond, in  
21 writing, to the division within 20 days after receipt of a  
22 written request for documents and information from the division  
23 concerning a consumer complaint. The response must address the  
24 issues and allegations raised in the complaint and include any  
25 requested documents concerning the consumer complaint not  
26 subject to attorney-client or work-product privilege. The  
27 division may impose an administrative penalty for failure to  
28 comply with this paragraph of up to \$2,500 per violation upon  
29 any entity licensed by the department or the office ~~and \$250 for~~  
30 ~~the first violation, \$500 for the second violation, and up to~~  
31 ~~\$1,000 for the third or subsequent violation upon any individual~~  
32 ~~licensed by the department or the office.~~

33 Section 3. Present subsection (9) of section 626.112,  
34 Florida Statutes, is redesignated as subsection (10), a new  
35 subsection (9) is added to that section, and paragraph (d) of  
36 subsection (7) and present subsection (9) of that section are  
37 amended, to read:

38 626.112 License and appointment required; agents, customer  
39 representatives, adjusters, insurance agencies, service



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40 representatives, managing general agents, insurance adjusting  
41 firms.-

42 (7)

43 ~~(d) Effective October 1, 2015, the department must~~  
44 ~~automatically convert the registration of an approved registered~~  
45 ~~insurance agency to an insurance agency license.~~

46 (9) (a) An individual, firm, partnership, corporation,  
47 association, or other entity may not act in its own name or  
48 under a trade name, directly or indirectly, as an adjusting firm  
49 unless it complies with s. 626.8696 with respect to possessing  
50 an adjusting firm license for each place of business at which it  
51 engages in an activity that may be performed only by a licensed  
52 insurance adjuster. However, an adjusting firm that is owned and  
53 operated by a single licensed adjuster conducting business in  
54 his or her individual name and not employing or otherwise using  
55 the services of or appointing other licensees is exempt from the  
56 adjusting firm licensing requirements of this subsection.

57 (b) A branch place of business that is established by a  
58 licensed adjusting firm is considered a branch firm and is not  
59 required to be licensed if:

60 1. It transacts business under the same name and federal  
61 tax identification number as the licensed adjusting firm;

62 2. It has designated with the department a primary adjuster  
63 operating the location as required by s. 626.8695; and

64 3. The address and telephone number of the branch location  
65 have been submitted to the department for inclusion in the  
66 licensing record of the licensed adjusting firm within 30 days  
67 after insurance transactions begin at the branch location.

68 (c) If an adjusting firm is required to be licensed but



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69 fails to file an application for licensure in accordance with  
70 this section, the department shall impose on the firm an  
71 administrative penalty of up to \$10,000.

72 (10)(9) Any person who knowingly transacts insurance or  
73 otherwise engages in insurance activities in this state without  
74 a license in violation of this section or who knowingly aids or  
75 abets an unlicensed person in transacting insurance or otherwise  
76 engaging in insurance activities in this state without a license  
77 commits a felony of the third degree, punishable as provided in  
78 s. 775.082, s. 775.083, or s. 775.084.

79 Section 4. Subsection (4) is added to section 626.602,  
80 Florida Statutes, to read:

81 626.602 Insurance agency names; disapproval.—The department  
82 may disapprove the use of any true or fictitious name, other  
83 than the bona fide natural name of an individual, by any  
84 insurance agency on any of the following grounds:

85 (4) The name contains the word "Medicare" or "Medicaid." An  
86 insurance agency whose name contains the word "Medicare" or  
87 "Medicaid" but which is licensed as of July 1, 2020, may  
88 continue to use that name as long as the agency's license is  
89 valid. If the agency's license expires or is suspended or  
90 revoked, the agency may not be relicensed using that name.

91 Section 5. Subsections (16) and (17) are added to section  
92 626.621, Florida Statutes, to read:

93 626.621 Grounds for discretionary refusal, suspension, or  
94 revocation of agent's, adjuster's, customer representative's,  
95 service representative's, or managing general agent's license or  
96 appointment.—The department may, in its discretion, deny an  
97 application for, suspend, revoke, or refuse to renew or continue



957714

98 the license or appointment of any applicant, agent, adjuster,  
99 customer representative, service representative, or managing  
100 general agent, and it may suspend or revoke the eligibility to  
101 hold a license or appointment of any such person, if it finds  
102 that as to the applicant, licensee, or appointee any one or more  
103 of the following applicable grounds exist under circumstances  
104 for which such denial, suspension, revocation, or refusal is not  
105 mandatory under s. 626.611:

106 (16) Taking an action that allows the personal financial or  
107 medical information of a consumer or customer to be made  
108 available or accessible to the general public, regardless of the  
109 format in which the record is stored.

110 (17) Initiating in-person or telephone solicitation after 9  
111 p.m. or before 8 a.m. local time of the prospective customer  
112 unless requested by the prospective customer.

113 Section 6. Section 626.782, Florida Statutes, is amended to  
114 read:

115 626.782 "Industrial class insurer" defined.—An "industrial  
116 class insurer" is an insurer collecting premiums on policies of  
117 ~~writing~~ industrial life insurance, as defined in s. 627.502,  
118 written before July 1, 2020, and as to such insurance, operates  
119 under a system of collecting a debit by its agent.

120 Section 7. Section 626.783, Florida Statutes, is amended to  
121 read:

122 626.783 "Ordinary-combination class insurer" defined.—An  
123 "ordinary-combination class insurer" is an insurer writing ~~both~~  
124 ordinary class insurance and collecting premiums on existing  
125 industrial life ~~class~~ insurance under s. 626.782.

126 Section 8. Section 626.796, Florida Statutes, is repealed.



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127           Section 9. Subsection (1) of section 626.8443, Florida  
128 Statutes, is amended to read:

129           626.8443 Duration of suspension or revocation.—

130           (1) The department shall, in its order suspending a title  
131 insurance agent's or agency's license or appointment or in its  
132 order suspending the eligibility of a person to hold or apply  
133 for such license or appointment, specify the period during which  
134 the suspension is to be in effect, but such period shall not  
135 exceed 2 years ~~1 year~~. The license, ~~or~~ appointment, or  
136 eligibility shall remain suspended during the period so  
137 specified, subject, however, to any rescission or modification  
138 of the order by the department, or modification or reversal  
139 thereof by the court, prior to expiration of the suspension  
140 period. A license, appointment, or eligibility that ~~which~~ has  
141 been suspended may not be reinstated except upon request for  
142 such reinstatement, but the department shall not grant such  
143 reinstatement if it finds that the circumstance or circumstances  
144 for which the license, appointment, and eligibility was  
145 suspended still exist or are likely to recur.

146           Section 10. Subsection (6) of section 626.854, Florida  
147 Statutes, is amended to read:

148           626.854 "Public adjuster" defined; prohibitions.—The  
149 Legislature finds that it is necessary for the protection of the  
150 public to regulate public insurance adjusters and to prevent the  
151 unauthorized practice of law.

152           (6) Except during a state of emergency declared by the  
153 Governor and except during the 1-year period after the date of  
154 loss, an insured or claimant may cancel a public adjuster's  
155 contract to adjust a claim without penalty or obligation within



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156 7 calendar ~~3 business~~ days after the date on which the contract  
157 is executed or within 7 calendar ~~3 business~~ days after the date  
158 on which the insured or claimant has notified the insurer of the  
159 claim, whichever is later. During a state of emergency declared  
160 by the Governor or during the 1-year period after the date of  
161 loss, an insured or claimant may cancel a public adjuster's  
162 contract to adjust a claim without penalty or obligation within  
163 21 calendar days after the date on which the contract is  
164 executed or within 21 calendar days after the date on which the  
165 insured or claimant has notified the insurer of the claim,  
166 whichever is later. The public adjuster's contract must disclose  
167 to the insured or claimant his or her right to cancel the  
168 contract and advise the insured or claimant that notice of  
169 cancellation must be submitted in writing and sent by certified  
170 mail, return receipt requested, or other form of mailing that  
171 provides proof thereof, to the public adjuster at the address  
172 specified in the contract; ~~provided, during any state of~~  
173 ~~emergency as declared by the Governor and for 1 year after the~~  
174 ~~date of loss, the insured or claimant has 5 business days after~~  
175 ~~the date on which the contract is executed to cancel a public~~  
176 ~~adjuster's contract.~~

177 Section 11. Effective January 1, 2021, subsection (3) of  
178 section 626.916, Florida Statutes, is amended, and paragraph (f)  
179 is added to subsection (1) of that section, to read:

180 626.916 Eligibility for export.—

181 (1) No insurance coverage shall be eligible for export  
182 unless it meets all of the following conditions:

183 (f) The insured has signed or otherwise provided documented  
184 acknowledgement of a disclosure in substantially the following



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185 form: "You are agreeing to place coverage in the surplus lines  
186 market. Coverage may be available in the admitted market.  
187 Persons insured by surplus lines carriers are not protected  
188 under the Florida Insurance Guaranty Act with respect to any  
189 right of recovery for the obligation of an insolvent unlicensed  
190 insurer."

191 (3) (a) Subsection (1) does not apply to wet marine and  
192 transportation or aviation risks that ~~which~~ are subject to s.  
193 626.917.

194 (b) Paragraphs (1) (a)-(d) do not apply to classes of  
195 insurance which are subject to s. 627.062(3)(d)1. These classes  
196 may be exportable under the following conditions:

197 1. The insurance must be placed only by or through a  
198 surplus lines agent licensed in this state;

199 2. The insurer must be made eligible under s. 626.918; and

200 3. The insured has complied with ~~must sign a disclosure~~  
201 paragraph (1) (f) that substantially provides the following: "You  
202 are agreeing to place coverage in the surplus lines market.  
203 Superior coverage may be available in the admitted market and at  
204 a lesser cost. Persons insured by surplus lines carriers are not  
205 protected under the Florida Insurance Guaranty Act with respect  
206 to any right of recovery for the obligation of an insolvent  
207 unlicensed insurer." If the disclosure notice is signed by the  
208 insured, the insured is presumed to have been informed and to  
209 know that other coverage may be available, and, with respect to  
210 the diligent-effort requirement under subsection (1), there is  
211 no liability on the part of, and no cause of action arises  
212 against, the retail agent presenting the form.

213 Section 12. Paragraph (z) of subsection (1) of section



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214 626.9541, Florida Statutes, is amended to read:

215 626.9541 Unfair methods of competition and unfair or  
216 deceptive acts or practices defined.—

217 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE  
218 ACTS.—The following are defined as unfair methods of competition  
219 and unfair or deceptive acts or practices:

220 (z) *Sliding*.—Sliding is the act or practice of any of the  
221 following:

222 1. Representing to the applicant that a specific ancillary  
223 coverage or product is required by law in conjunction with the  
224 purchase of insurance when such coverage or product is not  
225 required.†

226 2. Representing to the applicant that a specific ancillary  
227 coverage or product is included in the policy applied for  
228 without an additional charge when such charge is required.† ~~or~~

229 3. Charging an applicant for a specific ancillary coverage  
230 or product, in addition to the cost of the insurance coverage  
231 applied for, without the informed consent of the applicant.

232 4. Initiating, effectuating, binding, or otherwise issuing  
233 a policy of insurance without the prior informed consent of the  
234 owner of the property to be insured.

235 5. Mailing, transmitting, or otherwise submitting by any  
236 means an invoice for premium payment to a mortgagee or escrow  
237 agent, for the purpose of effectuating an insurance policy,  
238 without the prior informed consent of the owner of the property  
239 to be insured. However, this subparagraph does not apply in  
240 cases where the mortgagee or escrow is renewing insurance or  
241 issuing collateral protection insurance, as defined in s.  
242 624.6085, pursuant to the mortgage or other pertinent loan



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243 documents or communications regarding the property.

244 Section 13. Effective January 1, 2021, subsection (3) of  
245 section 626.9741, Florida Statutes, is amended to read:

246 626.9741 Use of credit reports and credit scores by  
247 insurers.-

248 (3) An insurer must inform an applicant or insured, in the  
249 same medium as the application is taken, that a credit report or  
250 score is being requested for underwriting or rating purposes.

251 The notification to the consumer must include the following

252 language: "The Department of Financial Services offers free

253 financial literacy programs to assist you with insurance-related

254 questions, including how credit works and how credit scores are

255 calculated. To learn more, call 1-877-693-5236 or visit

256 www.MyFloridaCFO.com." An insurer that makes an adverse decision

257 based, in whole or in part, upon a credit report must provide at  
258 no charge, a copy of the credit report to the applicant or

259 insured or provide the applicant or insured with the name,

260 address, and telephone number of the consumer reporting agency

261 from which the insured or applicant may obtain the credit

262 report. The insurer must provide notification to the consumer

263 explaining the reasons for the adverse decision. The reasons

264 must be provided in sufficiently clear and specific language so

265 that a person can identify the basis for the insurer's adverse

266 decision. Such notification shall include a description of the

267 four primary reasons, or such fewer number as existed, which

268 were the primary influences of the adverse decision. The use of

269 generalized terms such as "poor credit history," "poor credit

270 rating," or "poor insurance score" does not meet the explanation

271 requirements of this subsection. A credit score may not be used



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272 in underwriting or rating insurance unless the scoring process  
273 produces information in sufficient detail to permit compliance  
274 with the requirements of this subsection. It shall not be deemed  
275 an adverse decision if, due to the insured's credit report or  
276 credit score, the insured continues to receive a less favorable  
277 rate or placement in a less favorable tier or company at the  
278 time of renewal except for renewals or reunderwriting required  
279 by this section.

280 Section 14. Subsection (1) of section 626.9957, Florida  
281 Statutes, is amended to read:

282 626.9957 Conduct prohibited; denial, revocation, or  
283 suspension of registration.—

284 (1) As provided in s. 626.112, only a person licensed as an  
285 insurance agent or customer representative may engage in the  
286 solicitation of insurance. A person who engages in the  
287 solicitation of insurance as described in s. 626.112(1) without  
288 such license is subject to the penalties provided under s.  
289 626.112(10) ~~s. 626.112(9)~~.

290 Section 15. Subsection (10) of section 627.062, Florida  
291 Statutes, is amended to read:

292 627.062 Rate standards.—

293 (10) Any interest paid pursuant to s. 627.70131(7) ~~s.~~  
294 ~~627.70131(5)~~ may not be included in the insurer's rate base and  
295 may not be used to justify a rate or rate change.

296 Section 16. Effective January 1, 2021, subsection (6) is  
297 added to section 627.421, Florida Statutes, to read:

298 627.421 Delivery of policy.—

299 (6) For personal lines residential property insurance  
300 policies, the insurer shall, between March 1 and June 1 of each



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301 year, inclusive, deliver an outline of the hurricane coverage as  
302 specified in s. 627.4143(3), along with a current policy  
303 declarations page. This requirement shall apply only for those  
304 insureds who have provided the insurer with a valid e-mail  
305 address. This information shall be delivered directly to the  
306 policyholder via email or by an e-mail notice of information  
307 being posted to a secure web-based policy information page.

308 Section 17. Section 627.502, Florida Statutes, is amended  
309 to read:

310 627.502 "Industrial life insurance" defined; reporting;  
311 prohibition on new policies after a certain date.-

312 (1) For the purposes of this code, "industrial life  
313 insurance" is that form of life insurance written under policies  
314 under which premiums are payable monthly or more often, bearing  
315 the words "industrial policy" or "weekly premium policy" or  
316 words of similar import imprinted upon the policies as part of  
317 the descriptive matter, and issued by an insurer that ~~which~~, as  
318 to such industrial life insurance, is operating under a system  
319 of collecting a debit by its agent.

320 (2) Every life insurer servicing existing ~~transacting~~  
321 industrial life insurance shall report to the office all annual  
322 statement data regarding the exhibit of life insurance,  
323 including relevant information for industrial life insurance.

324 (3) Beginning July 1, 2020, a life insurer may not write a  
325 new policy of industrial life insurance.

326 Section 18. Effective January 1, 2021, section 627.70131,  
327 Florida Statutes, is amended to read:

328 627.70131 Insurer's duty to acknowledge communications  
329 regarding claims; investigation.-



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330 (1) (a) Upon an insurer's receiving a communication with  
331 respect to a claim, the insurer shall, within 14 calendar days,  
332 review and acknowledge receipt of such communication unless  
333 payment is made within that period of time or unless the failure  
334 to acknowledge is caused by factors beyond the control of the  
335 insurer which reasonably prevent such acknowledgment. If the  
336 acknowledgment is not in writing, a notification indicating  
337 acknowledgment shall be made in the insurer's claim file and  
338 dated. A communication made to or by a representative ~~an agent~~  
339 of an insurer with respect to a claim shall constitute  
340 communication to or by the insurer.

341 (b) As used in this subsection, the term "representative"  
342 ~~"agent"~~ means any person to whom an insurer has granted  
343 authority or responsibility to receive or make such  
344 communications with respect to claims on behalf of the insurer.

345 (c) This subsection shall not apply to claimants  
346 represented by counsel beyond those communications necessary to  
347 provide forms and instructions.

348 (2) Such acknowledgment shall be responsive to the  
349 communication. If the communication constitutes a notification  
350 of a claim, unless the acknowledgment reasonably advises the  
351 claimant that the claim appears not to be covered by the  
352 insurer, the acknowledgment shall provide necessary claim forms,  
353 and instructions, including an appropriate telephone number.

354 (3) (a) Unless otherwise provided by the policy of insurance  
355 or by law, within 10 business ~~working~~ days after an insurer  
356 receives proof of loss statements, the insurer shall begin such  
357 investigation as is reasonably necessary unless the failure to  
358 begin such investigation is caused by factors beyond the control



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359 of the insurer which reasonably prevent the commencement of such  
360 investigation.

361 (b) If such investigation involves a physical inspection of  
362 the property, the licensed adjuster assigned by the insurer must  
363 provide the policyholder with his or her name, license number,  
364 and contact information.

365 (c) If an insurer assigns the claim to a different licensed  
366 adjuster from the adjuster who performed the physical  
367 inspection, the insurer must, within 14 days after changing the  
368 licensed insurance adjuster assigned to a claim, provide the  
369 name, license number, and contact information of the new  
370 adjuster to the policyholder. The notification may be made  
371 electronically or via mail. If the notification is a physical  
372 letter, it must be postmarked within 14 days after the change in  
373 adjuster. The policyholder must be provided notice of any  
374 subsequent change to the assigned adjuster as set forth by this  
375 paragraph.

376 (4) An insurer shall establish a process by which an agent  
377 of record for an insurance policy receives the same notice as  
378 the policyholder as provided in paragraphs (3)(b) and (3)(c) in  
379 order to assist the agent of record in answering the  
380 policyholder's questions regarding claims. As used in this  
381 subsection, the term "agent of record" means the agent named on  
382 the declarations page of the insurance policy or, if there is no  
383 agent of record, another designated point of contact.

384 (5) For purposes of this section, the term "insurer" means  
385 any residential property insurer.

386 (6) (a) When providing a preliminary or partial estimate of  
387 damage regarding a claim, an insurer shall include with the



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388 estimate the following statement printed in at least 12-point  
389 bold, uppercase type: THIS ESTIMATE REPRESENTS OUR CURRENT  
390 EVALUATION OF THE COVERED DAMAGES TO YOUR INSURED PROPERTY AND  
391 MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU  
392 HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING  
393 YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

394 (b) When providing a payment on a claim which is not the  
395 full and final payment for the claim, an insurer shall include  
396 with the payment the following statement printed in at least 12-  
397 point bold, uppercase type: WE ARE CONTINUING TO EVALUATE YOUR  
398 CLAIM INVOLVING YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL  
399 PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL  
400 INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT  
401 US.

402 (7)-(5)(a) Within 90 calendar days after an insurer receives  
403 notice of an initial, reopened, or supplemental property  
404 insurance claim from a policyholder, the insurer shall pay or  
405 deny such claim or a portion of the claim unless the failure to  
406 pay is caused by factors beyond the control of the insurer which  
407 reasonably prevent such payment. Any payment of an initial or  
408 supplemental claim or portion of such claim made 90 calendar  
409 days after the insurer receives notice of the claim, or made  
410 more than 15 days after there are no longer factors beyond the  
411 control of the insurer which reasonably prevented such payment,  
412 whichever is later, bears interest at the rate set forth in s.  
413 55.03. Interest begins to accrue from the date the insurer  
414 receives notice of the claim. The provisions of this subsection  
415 may not be waived, voided, or nullified by the terms of the  
416 insurance policy. If there is a right to prejudgment interest,



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417 the insured shall select whether to receive prejudgment interest  
418 or interest under this subsection. Interest is payable when the  
419 claim or portion of the claim is paid. Failure to comply with  
420 this subsection constitutes a violation of this code. However,  
421 failure to comply with this subsection does not form the sole  
422 basis for a private cause of action.

423 (b) Notwithstanding subsection (5) ~~(4)~~, for purposes of  
424 this subsection, the term "claim" means any of the following:

425 1. A claim under an insurance policy providing residential  
426 coverage as defined in s. 627.4025(1);

427 2. A claim for structural or contents coverage under a  
428 commercial property insurance policy if the insured structure is  
429 10,000 square feet or less; or

430 3. A claim for contents coverage under a commercial tenant  
431 policy if the insured premises is 10,000 square feet or less.

432 (c) This subsection shall not apply to claims under an  
433 insurance policy covering nonresidential commercial structures  
434 or contents in more than one state.

435 (8) This section also applies to surplus lines insurers and  
436 surplus lines insurance authorized under ss. 626.913-626.937  
437 providing residential coverage, where coverage on the primary  
438 insured structure is less than \$700,000.

439 Section 19. Section 627.7031, Florida Statutes, is created  
440 to read:

441 627.7031 Foreign venue clauses prohibited.—After July 1,  
442 2020, a personal residential property insurance policy sold in  
443 this state, insuring only real property located in this state,  
444 may not require an insured to pursue dispute resolution through  
445 litigation, arbitration, or mediation outside this state. This



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446 section also applies to surplus lines insurers and surplus lines  
447 insurance authorized under ss. 626.913-626.937.

448 Section 20. Effective January 1, 2021, section 627.7142,  
449 Florida Statutes, is amended to read:

450 627.7142 Homeowner Claims Bill of Rights.—An insurer  
451 issuing a personal lines residential property insurance policy  
452 in this state must provide a Homeowner Claims Bill of Rights to  
453 a policyholder within 14 days after receiving an initial  
454 communication with respect to a claim, ~~unless the claim follows~~  
455 ~~an event that is the subject of a declaration of a state of~~  
456 ~~emergency by the Governor.~~ The purpose of the bill of rights is  
457 to summarize, in simple, nontechnical terms, existing Florida  
458 law regarding the rights of a personal lines residential  
459 property insurance policyholder who files a claim of loss. The  
460 Homeowner Claims Bill of Rights is specific to the claims  
461 process and does not represent all of a policyholder's rights  
462 under Florida law regarding the insurance policy. The Homeowner  
463 Claims Bill of Rights does not create a civil cause of action by  
464 any individual policyholder or class of policyholders against an  
465 insurer or insurers. The failure of an insurer to properly  
466 deliver the Homeowner Claims Bill of Rights is subject to  
467 administrative enforcement by the office but is not admissible  
468 as evidence in a civil action against an insurer. The Homeowner  
469 Claims Bill of Rights does not enlarge, modify, or contravene  
470 statutory requirements, including, but not limited to, ss.  
471 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does  
472 not prohibit an insurer from exercising its right to repair  
473 damaged property in compliance with the terms of an applicable  
474 policy or ss. 627.7011(5)(e) and 627.702(7). The Homeowner



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475 Claims Bill of Rights must state:

476

477

HOMEOWNER CLAIMS

478

BILL OF RIGHTS

479

This Bill of Rights is specific to the claims process  
480 and does not represent all of your rights under  
481 Florida law regarding your policy. There are also  
482 exceptions to the stated timelines when conditions are  
483 beyond your insurance company's control. This document  
484 does not create a civil cause of action by an  
485 individual policyholder, or a class of policyholders,  
486 against an insurer or insurers and does not prohibit  
487 an insurer from exercising its right to repair damaged  
488 property in compliance with the terms of an applicable  
489 policy.

490

491

YOU HAVE THE RIGHT TO:

492

1. Receive from your insurance company an  
493 acknowledgment of your reported claim within 14  
494 calendar days after the time you communicated the  
495 claim.

496

2. Upon written request, receive from your  
497 insurance company within 30 days after you have  
498 submitted a complete proof-of-loss statement to your  
499 insurance company, confirmation that your claim is  
500 covered in full, partially covered, or denied, or  
501 receive a written statement that your claim is being  
502 investigated.

503

3. Within 14 calendar days, receive notification



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504 from your insurance company if there has been a change  
505 in the company adjuster who is assigned to your claim.  
506 The notification must include the assigned adjuster's  
507 contact information.

508 4. Within 90 calendar days, subject to any dual  
509 interest noted in the policy, receive full settlement  
510 payment for your claim or payment of the undisputed  
511 portion of your claim, or your insurance company's  
512 denial of your claim.

513 5. Receive payment of interest, as provided in s.  
514 627.7031, from your insurance company, which begins  
515 accruing from the date your claim is filed if your  
516 insurance company does not pay full settlement of your  
517 initial, reopened, or supplemental claim or the  
518 undisputed portion of your claim or does not deny your  
519 claim within 90 calendar days after your claim is  
520 filed. The interest, if applicable, must be paid when  
521 your claim or undisputed portion of your claim is  
522 paid.

523 ~~6.4.~~ Free mediation of your disputed claim by the  
524 Florida Department of Financial Services, Division of  
525 Consumer Services, under most circumstances and  
526 subject to certain restrictions.

527 ~~7.5.~~ Neutral evaluation of your disputed claim,  
528 if your claim is for damage caused by a sinkhole and  
529 is covered by your policy.

530 ~~8.6.~~ Contact the Florida Department of Financial  
531 Services, Division of Consumer Services' toll-free  
532 helpline for assistance with any insurance claim or



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533 questions pertaining to the handling of your claim.  
534 You can reach the Helpline by phone at...(toll-free  
535 phone number)..., or you can seek assistance online at  
536 the Florida Department of Financial Services, Division  
537 of Consumer Services' website at...(website  
538 address)....

539  
540 YOU ARE ADVISED TO:

541 1. Contact your insurance company before entering  
542 into any contract for repairs to confirm any managed  
543 repair policy provisions or optional preferred  
544 vendors.

545 2. Make and document emergency repairs that are  
546 necessary to prevent further damage. Keep the damaged  
547 property, if feasible, keep all receipts, and take  
548 photographs or video of damage before and after any  
549 repairs to provide to your insurer.

550 3. Carefully read any contract that requires you  
551 to pay out-of-pocket expenses or a fee that is based  
552 on a percentage of the insurance proceeds that you  
553 will receive for repairing or replacing your property.

554 4. Confirm that the contractor you choose is  
555 licensed to do business in Florida. You can verify a  
556 contractor's license and check to see if there are any  
557 complaints against him or her by calling the Florida  
558 Department of Business and Professional Regulation.  
559 You should also ask the contractor for references from  
560 previous work.

561 5. Require all contractors to provide proof of



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562 insurance before beginning repairs.

563 6. Take precautions if the damage requires you to  
564 leave your home, including securing your property and  
565 turning off your gas, water, and electricity, and  
566 contacting your insurance company and provide a phone  
567 number where you can be reached.

568 Section 21. Paragraph (a) of subsection (1) and subsection  
569 (6) of section 631.57, Florida Statutes, are amended to read:

570 631.57 Powers and duties of the association.—

571 (1) The association shall:

572 (a)1. Be obligated to the extent of the covered claims  
573 existing:

574 a. Prior to adjudication of insolvency and arising within  
575 30 days after the determination of insolvency;

576 b. Before the policy expiration date if less than 30 days  
577 after the determination; or

578 c. Before the insured replaces the policy or causes its  
579 cancellation, if she or he does so within 30 days of the  
580 determination.

581 2. The obligation under subparagraph 1. includes ~~only~~ the  
582 amount of each covered claim which is ~~in excess of \$100 and is~~  
583 less than \$300,000, except that policies providing coverage for  
584 homeowner's insurance shall provide for an additional \$200,000  
585 for the portion of a covered claim which relates only to the  
586 damage to the structure and contents.

587 3.a. Notwithstanding subparagraph 2., the obligation under  
588 subparagraph 1. for policies covering condominium associations  
589 or homeowners' associations, which associations have a  
590 responsibility to provide insurance coverage on residential



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591 units within the association, shall include that amount of each  
592 covered property insurance claim which is less than \$100,000  
593 multiplied by the number of condominium units or other  
594 residential units; however, as to homeowners' associations, this  
595 sub-subparagraph applies only to claims for damage or loss to  
596 residential units and structures attached to residential units.

597       b. Notwithstanding sub-subparagraph a., the association has  
598 no obligation to pay covered claims that are to be paid from the  
599 proceeds of bonds issued under s. 631.695. However, the  
600 association shall assign and pledge the first available moneys  
601 from all or part of the assessments to be made under paragraph  
602 (3) (a) to or on behalf of the issuer of such bonds for the  
603 benefit of the holders of such bonds. The association shall  
604 administer any such covered claims and present valid covered  
605 claims for payment in accordance with the provisions of the  
606 assistance program in connection with which such bonds have been  
607 issued.

608       4. In no event shall the association be obligated to a  
609 policyholder or claimant in an amount in excess of the  
610 obligation of the insolvent insurer under the policy from which  
611 the claim arises.

612       (6) The association may extend the time limits specified in  
613 paragraph (1) (a) by up to an additional 60 days ~~or waive the~~  
614 ~~applicability of the \$100 deductible specified in paragraph~~  
615 ~~(1) (a)~~ if the board determines that either or both such actions  
616 are necessary to facilitate the bulk assumption of obligations.

617       Section 22. Section 648.30, Florida Statutes, is amended to  
618 read:

619       648.30 Licensure and appointment required; prohibited acts;



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620 penalties.—

621 (1) A person may not act in the capacity of a bail bond  
622 agent or temporary bail bond agent or perform any of the  
623 functions, duties, or powers prescribed for bail bond agents or  
624 temporary bail bond agents under this chapter unless that person  
625 is qualified, licensed, and appointed as provided in this  
626 chapter.

627 (2) A person may not represent himself or herself to be a  
628 bail enforcement agent, bounty hunter, or other similar title in  
629 this state.

630 (3) A person, other than a certified law enforcement  
631 officer, may not apprehend, detain, or arrest a principal on a  
632 bond, wherever issued, unless that person is qualified,  
633 licensed, and appointed as provided in this chapter or licensed  
634 as a bail bond agent or bail bond enforcement agent, or holds an  
635 equivalent license by the state where the bond was written.

636 (4) Any person who violates this section commits a felony  
637 of the third degree, punishable as provided in s. 775.082, s.  
638 775.083, or s. 775.084.

639 (5) Any licensee under this chapter who knowingly aids or  
640 abets an unlicensed person in violating this section commits a  
641 felony of the third degree, punishable as provided in s.  
642 775.082, s. 775.083, or s. 775.084.

643 Section 23. Paragraphs (b) and (c) of subsection (4) and  
644 subsections (1) and (10) of section 717.124, Florida Statutes,  
645 are amended to read:

646 717.124 Unclaimed property claims.—

647 (1) Any person, excluding another state, claiming an  
648 interest in any property paid or delivered to the department



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649 under this chapter may file with the department a claim on a  
650 form prescribed by the department and verified by the claimant  
651 or the claimant's representative. The claimant's representative  
652 must be an attorney licensed to practice law in this state, a  
653 licensed Florida-certified public accountant, or a private  
654 investigator licensed under chapter 493. The claimant's  
655 representative must be registered with the department under this  
656 chapter. The claimant, or the claimant's representative, shall  
657 provide the department with a legible copy of a valid driver  
658 license of the claimant at the time the original claim form is  
659 filed. If the claimant has not been issued a valid driver  
660 license at the time the original claim form is filed, the  
661 department shall be provided with a legible copy of a  
662 photographic identification of the claimant issued by the United  
663 States, a state or territory of the United States, a foreign  
664 nation, or a political subdivision or agency thereof or other  
665 evidence deemed acceptable by the department by rule. In lieu of  
666 photographic identification, a notarized sworn statement by the  
667 claimant may be provided which affirms the claimant's identity  
668 and states the claimant's full name and address. The claimant  
669 must produce to the notary photographic identification of the  
670 claimant issued by the United States, a state or territory of  
671 the United States, a foreign nation, or a political subdivision  
672 or agency thereof or other evidence deemed acceptable by the  
673 department by rule. The notary shall indicate the notary's full  
674 address on the notarized sworn statement. Any claim filed  
675 without the required identification or the sworn statement with  
676 the original claim form and the original Florida Uniform  
677 Unclaimed Property Recovery Agreement or Florida Uniform



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678 Property Purchase Agreement ~~power of attorney or purchase~~  
679 ~~agreement~~, if applicable, is void.

680 (a) Within 90 days after receipt of a claim, the department  
681 may return any claim that provides for the receipt of fees and  
682 costs greater than that permitted under this chapter or that  
683 contains any apparent errors or omissions. The department may  
684 also request that the claimant or the claimant's representative  
685 provide additional information. The department shall retain a  
686 copy or electronic image of the claim.

687 (b) A claimant or the claimant's representative shall be  
688 deemed to have withdrawn a claim if no response to the  
689 department's request for additional information is received by  
690 the department within 60 days after the notification of any  
691 apparent errors or omissions.

692 (c) Within 90 days after receipt of the claim, or the  
693 response of the claimant or the claimant's representative to the  
694 department's request for additional information, whichever is  
695 later, the department shall determine each claim. Such  
696 determination shall contain a notice of rights provided by ss.  
697 120.569 and 120.57. The 90-day period shall be extended by 60  
698 days if the department has good cause to need additional time or  
699 if the unclaimed property:

700 1. Is owned by a person who has been a debtor in  
701 bankruptcy;

702 2. Was reported with an address outside of the United  
703 States;

704 3. Is being claimed by a person outside of the United  
705 States; or

706 4. Contains documents filed in support of the claim that



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707 are not in the English language and have not been accompanied by  
708 an English language translation.

709 (d) The department shall deny any claim under which the  
710 claimant's representative has refused to authorize the  
711 department to reduce the fees and costs to the maximum permitted  
712 under this chapter.

713 (4)

714 (b) If an owner authorizes an attorney licensed to practice  
715 law in this state, Florida-certified public accountant, or  
716 private investigator licensed under chapter 493, and registered  
717 with the department under this chapter, to claim the unclaimed  
718 property on the owner's behalf, the department is authorized to  
719 make distribution of the property or money in accordance with  
720 the Florida Uniform Unclaimed Property Recovery Agreement or  
721 Florida Uniform Property Purchase Agreement under s. 717.135  
722 ~~such power of attorney~~. The original Florida Uniform Unclaimed  
723 Property Recovery Agreement or Florida Uniform Property Purchase  
724 Agreement ~~power of attorney~~ must be executed by the claimant or  
725 seller ~~owner~~ and must be filed with the department.

726 (c)1. Payments of approved claims for unclaimed cash  
727 accounts shall be made to the owner after deducting any fees and  
728 costs authorized pursuant to a Florida Uniform Unclaimed  
729 Property Recovery Agreement ~~written power of attorney~~. The  
730 contents of a safe-deposit box shall be delivered directly to  
731 the claimant ~~notwithstanding any power of attorney or agreement~~  
732 ~~to the contrary~~.

733 2. Payments of fees and costs authorized pursuant to a  
734 Florida Uniform Unclaimed Property Recovery Agreement ~~written~~  
735 ~~power of attorney~~ for approved claims must ~~shall~~ be made or



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736 issued to the law firm of the designated attorney licensed to  
737 practice law in this state, the public accountancy firm of the  
738 licensed Florida-certified public accountant, or the designated  
739 employing private investigative agency licensed by this state.  
740 Such payments shall be made by electronic funds transfer and may  
741 be made on such periodic schedule as the department may define  
742 by rule, provided the payment intervals do not exceed 31 days.  
743 Payment made to an attorney licensed in this state, a Florida-  
744 certified public accountant, or a private investigator licensed  
745 under chapter 493, operating individually or as a sole  
746 practitioner, shall be to the attorney, certified public  
747 accountant, or private investigator.

748 (10) Notwithstanding any other provision of this chapter,  
749 the department may develop a process by which a registered  
750 claimant's representative or a buyer of unclaimed property may  
751 electronically submit to the department an electronic image of a  
752 completed claim and claims-related documents pursuant to this  
753 chapter, including a Florida Uniform Unclaimed Property Recovery  
754 Agreement or Florida Uniform Property Purchase Agreement ~~a~~  
755 ~~limited power of attorney or purchase agreement~~ that has been  
756 manually signed and dated by a claimant or seller pursuant to s.  
757 717.135 ~~or s. 717.1351~~, after the claimant's representative or  
758 the buyer of unclaimed property receives the original documents  
759 provided by the claimant or the seller for any claim. Each claim  
760 filed by a registered claimant's representative or a buyer of  
761 unclaimed property must include a statement by the claimant's  
762 representative or the buyer of unclaimed property attesting that  
763 all documents are true copies of the original documents and that  
764 all original documents are physically in the possession of the



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765 claimant's representative or the buyer of unclaimed property.  
766 All original documents must be kept in the original form, by  
767 claim number, under the secure control of the claimant's  
768 representative or the buyer of unclaimed property and must be  
769 available for inspection by the department in accordance with s.  
770 717.1315. The department may adopt rules to implement this  
771 subsection.

772 Section 24. Subsection (2) of section 717.12404, Florida  
773 Statutes, is amended to read:

774 717.12404 Claims on behalf of a business entity or trust.—

775 (2) Claims on behalf of a dissolved corporation, a business  
776 entity other than an active corporation, or a trust must include  
777 a legible copy of a valid driver license of the person acting on  
778 behalf of the dissolved corporation, business entity other than  
779 an active corporation, or trust. If the person has not been  
780 issued a valid driver license, the department shall be provided  
781 with a legible copy of a photographic identification of the  
782 person issued by the United States, a foreign nation, or a  
783 political subdivision or agency thereof. In lieu of photographic  
784 identification, a notarized sworn statement by the person may be  
785 provided which affirms the person's identity and states the  
786 person's full name and address. The person must produce his or  
787 her photographic identification issued by the United States, a  
788 state or territory of the United States, a foreign nation, or a  
789 political subdivision or agency thereof or other evidence deemed  
790 acceptable by the department by rule. The notary shall indicate  
791 the notary's full address on the notarized sworn statement. Any  
792 claim filed without the required identification or the sworn  
793 statement with the original claim form and the original Florida



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794 Uniform Unclaimed Property Recovery Agreement or Florida Uniform  
795 Property Purchase Agreement ~~power of attorney~~, if applicable, is  
796 void.

797 Section 25. Subsection (1) of section 717.1315, Florida  
798 Statutes, is amended to read:

799 717.1315 Retention of records by claimant's representatives  
800 and buyers of unclaimed property.—

801 (1) Every claimant's representative and buyer of unclaimed  
802 property shall keep and use in his or her business such books,  
803 accounts, and records of the business conducted under this  
804 chapter to enable the department to determine whether such  
805 person is complying with this chapter and the rules adopted by  
806 the department under this chapter. Every claimant's  
807 representative and buyer of unclaimed property shall preserve  
808 such books, accounts, and records, including every Florida  
809 Uniform Unclaimed Property Recovery Agreement or Florida Uniform  
810 Property Purchase Agreement ~~power of attorney or agreement~~  
811 between the owner and such claimant's representative or buyer,  
812 for at least 3 years after the date of the initial ~~power of~~  
813 ~~attorney or~~ agreement.

814 Section 26. Paragraph (j) of subsection (1) of section  
815 717.1322, Florida Statutes, is amended to read:

816 717.1322 Administrative and civil enforcement.—

817 (1) The following acts are violations of this chapter and  
818 constitute grounds for an administrative enforcement action by  
819 the department in accordance with the requirements of chapter  
820 120 and for civil enforcement by the department in a court of  
821 competent jurisdiction:

822 (j) Requesting or receiving compensation for notifying a



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823 person of his or her unclaimed property or assisting another  
824 person in filing a claim for unclaimed property, unless the  
825 person is an attorney licensed to practice law in this state, a  
826 Florida-certified public accountant, or a private investigator  
827 licensed under chapter 493, or entering into, or making a  
828 solicitation to enter into, an agreement ~~a power of attorney~~ to  
829 file a claim for unclaimed property owned by another, or a  
830 contract or agreement to purchase unclaimed property, unless  
831 such person is registered with the department pursuant to this  
832 chapter and an attorney licensed to practice law in this state  
833 in the regular practice of her or his profession, a Florida-  
834 certified public accountant who is acting within the scope of  
835 the practice of public accounting as defined in chapter 473, or  
836 a private investigator licensed under chapter 493. This  
837 subsection does not apply to a person who has been granted a  
838 durable power of attorney to convey and receive all of the real  
839 and personal property of the owner, is the court-appointed  
840 guardian of the owner, has been employed as an attorney or  
841 qualified representative to contest the department's denial of a  
842 claim, or has been employed as an attorney to probate the estate  
843 of the owner or an heir or legatee of the owner.

844 Section 27. Section 717.135, Florida Statutes, is amended  
845 to read:

846 (Substantial rewording of section. See  
847 s. 717.135, F.S., for present text.)

848 717.135 Recovery agreements and purchase agreements for  
849 claims filed by claimant's representative; fees and costs.-

850 (1) In order to protect the interests of owners of  
851 unclaimed property, the department shall adopt by rule a form



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852 entitled "Florida Uniform Unclaimed Property Recovery Agreement"  
853 and a form entitled "Florida Uniform Property Purchase  
854 Agreement."

855 (2) The Florida Uniform Unclaimed Property Recovery  
856 Agreement form and the Florida Uniform Property Purchase  
857 Agreement form must include and disclose:

858 (a) The total dollar amount of unclaimed property accounts  
859 claimed or sold.

860 (b) Either the total percentage of all authorized fees and  
861 costs to be paid to the claimant's representative or the  
862 percentage of the value of the property to be paid as net gain  
863 to the purchasing registered claimant's representative.

864 (c) Either the total dollar amount to be deducted and  
865 received from the claimant as fees and costs by the claimant's  
866 representative or the total net dollar amount to be received by  
867 the purchasing registered claimant's representative.

868 (d) The net dollar amount to be received by the claimant or  
869 seller.

870 (e) For each account claimed, the unclaimed property  
871 account number and name of the apparent owner, as listed on the  
872 department's database.

873 (f) For the Florida Uniform Property Purchase Agreement, a  
874 statement that the purchase price will be remitted to the seller  
875 within 30 days after the execution of the form by the seller.

876 (g) The name, address, e-mail address, phone number, and  
877 license number of the registered claimant's representative.

878 (h) The manual signature of the claimant or seller and the  
879 date signed.

880 (i) The social security number or taxpayer identification



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881 number of the claimant or seller, if available. A number is  
882 available if one has been issued to the claimant or seller.

883 (j) A limit of total fees and costs, or the total discount  
884 amount in the case of a purchase agreement, to no more than 20  
885 percent of the claimed amount.

886 (3) For a Florida Uniform Property Purchase Agreement form,  
887 proof that the seller has received payment must be filed with  
888 the department along with the claim. If proof of payment is not  
889 provided, the claim is void.

890 (4) A registered claimant's representative shall use the  
891 Florida Uniform Unclaimed Property Recovery Agreement form or  
892 the Florida Uniform Property Purchase Agreement form as the  
893 exclusive means of engaging with a claimant or seller to file a  
894 claim with the department.

895 (5) Fees and costs may be owed or paid to a registered  
896 claimant's representative only pursuant to the forms authorized  
897 by this section and upon approval of the claim filed thereby.

898 (6) A claimant's representative may not use or distribute  
899 any other agreement of any type with respect to the claimant or  
900 seller which relates to unclaimed property accounts held by the  
901 department or the Chief Financial Officer other than the  
902 agreements authorized by this section. Any agreement that is not  
903 authorized by this section is null and void.

904 (7) The forms under subsection (1):

905 (a) May not contain language that makes the agreement  
906 irrevocable; and

907 (b) May not contain language that creates an assignment of  
908 any unclaimed property held by the department.

909 (8) This section does not supersede the conflicting claims



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910 provisions of s. 717.1241.

911 (9) At the time a claim is approved, the department may pay  
912 any additional account that is owned by the claimant but has not  
913 been claimed at the time of approval, provided that no  
914 subsequent claim has been filed and is pending for the claimant  
915 at the time of approval.

916 Section 28. Section 717.1351, Florida Statutes, is  
917 repealed.

918 Section 29. Except as otherwise expressly provided in this  
919 act, this act shall take effect upon becoming a law.

920

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

922 And the title is amended as follows:

923 Delete everything before the enacting clause  
924 and insert:

925 A bill to be entitled

926 An act relating to consumer protection; amending s.  
927 501.0051, F.S.; prohibiting consumer reporting  
928 agencies from charging to reissue or provide a new  
929 unique personal identifier to a consumer for the  
930 removal of a security freeze; amending s. 624.307,  
931 F.S.; revising a requirement for entities licensed or  
932 authorized by the Department of Financial Services or  
933 the Office of Insurance Regulation to respond to the  
934 department's Division of Consumer Services regarding  
935 consumer complaints; revising administrative penalties  
936 the division may impose for failure to comply;  
937 amending s. 626.112, F.S.; prohibiting unlicensed  
938 activity by an adjusting firm; providing an exemption;



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939 providing an exemption from licensure for branch firms  
940 that meet certain criteria; providing an  
941 administrative penalty for failing to apply for  
942 certain licensure; providing a criminal penalty for  
943 aiding or abetting unlicensed activity; deleting an  
944 obsolete provision; amending s. 626.602, F.S.;

945 authorizing the department to disapprove the use of  
946 insurance agency names containing the words "Medicare"  
947 or "Medicaid"; providing an exception for certain  
948 insurance agencies; amending s. 626.621, F.S.; adding  
949 grounds on which the department may take certain  
950 actions against a license, appointment, or application  
951 of certain insurance representatives; amending ss.  
952 626.782 and 626.783, F.S.; revising the definitions of  
953 the terms "industrial class insurer" and "ordinary-  
954 combination class insurer," respectively, to conform  
955 to changes made by the act; repealing s. 626.796,  
956 F.S., relating to the representation of multiple  
957 insurers in the same industrial debit territory;  
958 amending s. 626.8443, F.S.; increasing the maximum  
959 period of suspension of a title insurance agent's or  
960 agency's license; amending s. 626.854, F.S.; revising  
961 the timeframes in which an insured or claimant may  
962 cancel a public adjuster's contract to adjust a claim  
963 without penalty or obligation; amending s. 626.916,  
964 F.S.; revising the classes of insurance subject to a  
965 disclosure requirement before being eligible for  
966 export under the Surplus Lines Law; amending s.  
967 626.9541, F.S.; adding certain acts or practices to



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968 the definition of sliding; amending s. 626.9741, F.S.;  
969 requiring an insurer to include certain additional  
970 information when providing an applicant or insured  
971 with certain credit report or score information;  
972 amending ss. 626.9957 and 627.062, F.S.; conforming  
973 cross-references; amending s. 627.421, F.S.; requiring  
974 personal lines residential property insurers to  
975 annually deliver a certain notification to certain  
976 policyholders within a specified timeframe; amending  
977 s. 627.502, F.S.; prohibiting life insurers from  
978 writing new policies of industrial life insurance  
979 beginning on a certain date; amending s. 627.70131,  
980 F.S.; providing that communication made to or by an  
981 insurer's representative, rather than to or by an  
982 insurer's agent, constitutes communication to or by  
983 the insurer; requiring an insurer-assigned licensed  
984 adjuster to provide the policyholder with certain  
985 information in certain investigations; specifying  
986 requirements for insurers in notifying policyholders  
987 for certain changes in assigned adjusters; requiring  
988 an insurer to establish a process to provide the agent  
989 of record access to claim status information for a  
990 certain purpose; defining the term "agent of record";  
991 requiring insurers to include specified notices when  
992 providing preliminary or partial damage estimates or  
993 claim payments; specifying the timeframe in which an  
994 insurer must pay or deny property insurance claims  
995 under certain circumstances; providing applicability;  
996 conforming provisions to changes made by the act;



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997 creating s. 627.7031, F.S.; prohibiting foreign venue  
998 clauses in property insurance policies; providing  
999 applicability; amending s. 627.7142, F.S.; revising  
1000 information contained in the Homeowner Claims Bill of  
1001 Rights; conforming provisions to changes made by the  
1002 act; amending s. 631.57, F.S.; deleting a deductible  
1003 on the Florida Insurance Guaranty Association,  
1004 Incorporated's obligation as to certain covered  
1005 claims; amending s. 648.30, F.S.; prohibiting the  
1006 aiding or abetting of unlicensed activity of a bail  
1007 bond agent or temporary bail bond agent; amending ss.  
1008 717.124, 717.12404, 717.1315, and 717.1322, F.S.;  
1009 conforming provisions to changes made by the act;  
1010 amending s. 717.135, F.S.; replacing provisions  
1011 relating to powers of attorney to recover unclaimed  
1012 property with provisions relating to uniform forms for  
1013 unclaimed property recovery agreements and purchase  
1014 agreements; requiring the department to adopt the  
1015 uniform forms by rule; specifying required information  
1016 and disclosures in the forms; requiring that, for the  
1017 purchase agreement form, proof the seller received  
1018 payment be filed with the department along with the  
1019 claim; requiring registered claimant's representatives  
1020 to use the forms as the exclusive means of engaging  
1021 with a claimant or seller to file claims and  
1022 prohibiting them from using or distributing other  
1023 agreements; specifying a limitation on fees and costs  
1024 owed or paid; prohibiting certain language in the  
1025 forms; authorizing the department to pay additional



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1026 accounts owned by the claimant under certain  
1027 circumstances; providing construction; repealing s.  
1028 717.1351, F.S., relating to the acquisition of  
1029 unclaimed property; providing effective dates.

By Senator Wright

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1 A bill to be entitled  
 2 An act relating to consumer protection; amending s.  
 3 501.0051, F.S.; prohibiting consumer reporting  
 4 agencies from charging to reissue or provide a new  
 5 unique personal identifier to a consumer for the  
 6 removal of a security freeze; amending s. 624.307,  
 7 F.S.; revising a requirement for entities licensed or  
 8 authorized by the Department of Financial Services or  
 9 the Office of Insurance Regulation to respond to the  
 10 department's Division of Consumer Services regarding  
 11 consumer complaints; revising administrative penalties  
 12 the division may impose for failure to comply;  
 13 amending s. 626.112, F.S.; prohibiting unlicensed  
 14 activity by an adjusting firm; providing an exemption;  
 15 providing an exemption from licensure for branch firms  
 16 that meet certain criteria; providing an  
 17 administrative penalty for failing to apply for  
 18 certain licensure; providing a criminal penalty for  
 19 aiding or abetting unlicensed activity; deleting an  
 20 obsolete provision; amending s. 626.602, F.S.;  
 21 authorizing the department to disapprove the use of  
 22 insurance agency names containing the words "Medicare"  
 23 or "Medicaid"; providing an exception for certain  
 24 insurance agencies; amending s. 626.621, F.S.; adding  
 25 grounds on which the department may take certain  
 26 actions against a license, appointment, or application  
 27 of certain insurance representatives; amending ss.  
 28 626.782 and 626.783, F.S.; revising the definitions of  
 29 the terms "industrial class insurer" and "ordinary-

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30 combination class insurer," respectively, to conform  
 31 to changes made by the act; repealing s. 626.796,  
 32 F.S., relating to the representation of multiple  
 33 insurers in the same industrial debit territory;  
 34 amending s. 626.8443, F.S.; increasing the maximum  
 35 period of suspension of a title insurance agent's or  
 36 agency's license; amending s. 626.854, F.S.; revising  
 37 the timeframes in which an insured or claimant may  
 38 cancel a public adjuster's contract to adjust a claim  
 39 without penalty or obligation; amending s. 626.916,  
 40 F.S.; revising the classes of insurance subject to a  
 41 disclosure requirement before being eligible for  
 42 export under the Surplus Lines Law; amending s.  
 43 626.9541, F.S.; adding certain acts or practices to  
 44 the definition of sliding; amending s. 626.9741, F.S.;  
 45 requiring an insurer to include certain additional  
 46 information when providing an applicant or insured  
 47 with certain credit report or score information;  
 48 amending ss. 626.9957 and 627.062, F.S.; conforming  
 49 cross-references; amending s. 627.421, F.S.; requiring  
 50 personal lines residential property insurers to  
 51 annually deliver a certain notification to  
 52 policyholders within a specified timeframe; amending  
 53 s. 627.502, F.S.; prohibiting life insurers from  
 54 writing new policies of industrial life insurance  
 55 beginning on a certain date; amending s. 627.70131,  
 56 F.S.; providing that communication made to or by an  
 57 insurer's representative, rather than to or by an  
 58 insurer's agent, constitutes communication to or by

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59 the insurer; requiring an insurer-assigned licensed  
 60 adjuster to provide the policyholder with certain  
 61 information in certain investigations; requiring that  
 62 certain adjuster reports be provided to policyholders  
 63 within a certain timeframe; specifying requirements  
 64 for insurers in notifying policyholders for certain  
 65 changes in assigned adjusters; requiring an insurer to  
 66 establish a process to provide the agent of record  
 67 access to claim status information for a certain  
 68 purpose; defining the term "agent of record";  
 69 requiring insurers to include specified notices when  
 70 providing preliminary or partial damage estimates or  
 71 claim payments; specifying the timeframe in which an  
 72 insurer must pay or deny property insurance claims  
 73 under certain circumstances; providing applicability;  
 74 conforming provisions to changes made by the act;  
 75 creating s. 627.7031, F.S.; prohibiting foreign venue  
 76 clauses in property insurance policies; providing  
 77 applicability; amending s. 627.7142, F.S.; revising  
 78 information contained in the Homeowner Claims Bill of  
 79 Rights; conforming provisions to changes made by the  
 80 act; amending s. 631.57, F.S.; deleting a deductible  
 81 on the Florida Insurance Guaranty Association,  
 82 Incorporated's obligation as to certain covered  
 83 claims; amending s. 648.30, F.S.; prohibiting the  
 84 aiding or abetting of unlicensed activity of a bail  
 85 bond agent or temporary bail bond agent; amending ss.  
 86 717.124, 717.12404, 717.1315, and 717.1322, F.S.;  
 87 conforming provisions to changes made by the act;

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88 amending s. 717.135, F.S.; replacing provisions  
 89 relating to powers of attorney to recover unclaimed  
 90 property with provisions relating to uniform forms for  
 91 unclaimed property recovery agreements and purchase  
 92 agreements; requiring the department to adopt the  
 93 uniform forms by rule; specifying required information  
 94 and disclosures in the forms; requiring that, for the  
 95 purchase agreement form, proof the seller received  
 96 payment be filed with the department along with the  
 97 claim; requiring registered claimant's representatives  
 98 to use the forms as the exclusive means of engaging  
 99 with a claimant or seller to file claims and  
 100 prohibiting them from using or distributing other  
 101 agreements; specifying a limitation on fees and costs  
 102 owed or paid; prohibiting certain language in the  
 103 forms; authorizing the department to pay additional  
 104 accounts owned by the claimant under certain  
 105 circumstances; providing construction; repealing s.  
 106 717.1351, F.S., relating to the acquisition of  
 107 unclaimed property; providing an effective date.

108  
 109 Be It Enacted by the Legislature of the State of Florida:

110  
 111 Section 1. Paragraph (b) of subsection (9) of section  
 112 501.0051, Florida Statutes, is amended to read:

113 501.0051 Protected consumer report security freeze.-

114 (9)

115 (b) A consumer reporting agency may not charge to a  
 116 ~~reasonable fee, not to exceed \$10, if the representative fails~~

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117 ~~to retain the original unique personal identifier provided by~~  
 118 ~~the consumer reporting agency and the agency must reissue the~~  
 119 ~~unique personal identifier or provide a new unique personal~~  
 120 ~~identifier to the consumer representative.~~

121 Section 2. Paragraph (b) of subsection (10) of section  
 122 624.307, Florida Statutes, is amended to read:

123 624.307 General powers; duties.—

124 (10)

125 (b) Any ~~entity person~~ licensed or issued a certificate of  
 126 authority by the department or the office shall respond, in  
 127 writing, to the division within 20 days after receipt of a  
 128 written request for documents and information from the division  
 129 concerning a consumer complaint. The response must address the  
 130 issues and allegations raised in the complaint and include any  
 131 requested documents. The division may impose an administrative  
 132 penalty for failure to comply with this paragraph of up to  
 133 \$2,500 per violation upon any entity licensed by the department  
 134 or the office ~~and \$250 for the first violation, \$500 for the~~  
 135 ~~second violation, and up to \$1,000 for the third or subsequent~~  
 136 ~~violation upon any individual licensed by the department or the~~  
 137 ~~office.~~

138 Section 3. Present subsection (9) of section 626.112,  
 139 Florida Statutes, is redesignated as subsection (10), a new  
 140 subsection (9) is added to that section, and paragraph (d) of  
 141 subsection (7) and present subsection (9) of that section are  
 142 amended, to read:

143 626.112 License and appointment required; agents, customer  
 144 representatives, adjusters, insurance agencies, service  
 145 representatives, managing general agents, insurance adjusting

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146 firms.—

147 (7)

148 ~~(d) Effective October 1, 2015, the department must~~  
 149 ~~automatically convert the registration of an approved registered~~  
 150 ~~insurance agency to an insurance agency license.~~

151 (9) (a) An individual, firm, partnership, corporation,  
 152 association, or other entity may not act in its own name or  
 153 under a trade name, directly or indirectly, as an adjusting firm  
 154 unless it complies with s. 626.8696 with respect to possessing  
 155 an adjusting firm license for each place of business at which it  
 156 engages in an activity that may be performed only by a licensed  
 157 insurance adjuster. However, an adjusting firm that is owned and  
 158 operated by a single licensed adjuster conducting business in  
 159 his or her individual name and not employing or otherwise using  
 160 the services of or appointing other licensees is exempt from the  
 161 adjusting firm licensing requirements of this subsection.

162 (b) A branch place of business that is established by a  
 163 licensed adjusting firm is considered a branch firm and is not  
 164 required to be licensed if:

165 1. It transacts business under the same name and federal  
 166 tax identification number as the licensed adjusting firm;

167 2. It has designated with the department a primary adjuster  
 168 operating the location as required by s. 626.8695; and

169 3. The address and telephone number of the branch location  
 170 have been submitted to the department for inclusion in the  
 171 licensing record of the licensed adjusting firm within 30 days  
 172 after insurance transactions begin at the branch location.

173 (c) If an adjusting firm is required to be licensed, but  
 174 fails to file an application for licensure in accordance with

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175 this section, the department shall impose on the firm an  
 176 administrative penalty of up to \$10,000.

177 (10)(9) Any person who knowingly transacts insurance or  
 178 otherwise engages in insurance activities in this state without  
 179 a license in violation of this section or who knowingly aids or  
 180 abets an unlicensed person in transacting insurance or otherwise  
 181 engaging in insurance activities in this state without a license  
 182 commits a felony of the third degree, punishable as provided in  
 183 s. 775.082, s. 775.083, or s. 775.084.

184 Section 4. Subsection (4) is added to section 626.602,  
 185 Florida Statutes, to read:

186 626.602 Insurance agency names; disapproval.—The department  
 187 may disapprove the use of any true or fictitious name, other  
 188 than the bona fide natural name of an individual, by any  
 189 insurance agency on any of the following grounds:

190 (4) The name contains the word "Medicare" or "Medicaid." An  
 191 insurance agency whose name contains the word "Medicare" or  
 192 "Medicaid" but which is licensed as of July 1, 2020, may  
 193 continue to use that name as long as the agency's license is  
 194 valid. If the agency's license expires or is suspended or  
 195 revoked, the agency may not be relicensed using that name.

196 Section 5. Subsections (16) and (17) are added to section  
 197 626.621, Florida Statutes, to read:

198 626.621 Grounds for discretionary refusal, suspension, or  
 199 revocation of agent's, adjuster's, customer representative's,  
 200 service representative's, or managing general agent's license or  
 201 appointment.—The department may, in its discretion, deny an  
 202 application for, suspend, revoke, or refuse to renew or continue  
 203 the license or appointment of any applicant, agent, adjuster,

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204 customer representative, service representative, or managing  
 205 general agent, and it may suspend or revoke the eligibility to  
 206 hold a license or appointment of any such person, if it finds  
 207 that as to the applicant, licensee, or appointee any one or more  
 208 of the following applicable grounds exist under circumstances  
 209 for which such denial, suspension, revocation, or refusal is not  
 210 mandatory under s. 626.611:

211 (16) Allowing the personal financial or medical information  
 212 of a consumer or customer to be made available or accessible to  
 213 the general public, regardless of the format in which the record  
 214 is stored.

215 (17) Initiating in-person or telephone solicitation after 9  
 216 p.m. or before 8 a.m. local time of the prospective customer  
 217 unless requested by the prospective customer.

218 Section 6. Section 626.782, Florida Statutes, is amended to  
 219 read:

220 626.782 "Industrial class insurer" defined.—An "industrial  
 221 class insurer" is an insurer collecting premiums on policies of  
 222 writing industrial life insurance, as defined in s. 627.502,  
 223 written before July 1, 2020, and as to such insurance, operates  
 224 under a system of collecting a debit by its agent.

225 Section 7. Section 626.783, Florida Statutes, is amended to  
 226 read:

227 626.783 "Ordinary-combination class insurer" defined.—An  
 228 "ordinary-combination class insurer" is an insurer writing ~~both~~  
 229 ordinary class insurance and collecting premiums on existing  
 230 industrial life class insurance under s. 626.782.

231 Section 8. Section 626.796, Florida Statutes, is repealed.

232 Section 9. Subsection (1) of section 626.8443, Florida

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233 Statutes, is amended to read:

234 626.8443 Duration of suspension or revocation.—

235 (1) The department shall, in its order suspending a title  
236 insurance agent's or agency's license or appointment or in its  
237 order suspending the eligibility of a person to hold or apply  
238 for such license or appointment, specify the period during which  
239 the suspension is to be in effect, but such period shall not  
240 exceed 2 years ~~1 year~~. The license, ~~or~~ appointment, or  
241 eligibility shall remain suspended during the period so  
242 specified, subject, however, to any rescission or modification  
243 of the order by the department, or modification or reversal  
244 thereof by the court, prior to expiration of the suspension  
245 period. A license, appointment, or eligibility that which has  
246 been suspended may not be reinstated except upon request for  
247 such reinstatement, but the department shall not grant such  
248 reinstatement if it finds that the circumstance or circumstances  
249 for which the license, appointment, and eligibility was  
250 suspended still exist or are likely to recur.

251 Section 10. Subsection (6) of section 626.854, Florida  
252 Statutes, is amended to read:

253 626.854 "Public adjuster" defined; prohibitions.—The  
254 Legislature finds that it is necessary for the protection of the  
255 public to regulate public insurance adjusters and to prevent the  
256 unauthorized practice of law.

257 (6) Except during a state of emergency declared by the  
258 Governor and except during the 1-year period after the date of  
259 loss, an insured or claimant may cancel a public adjuster's  
260 contract to adjust a claim without penalty or obligation within  
261 7 calendar ~~3 business~~ days after the date on which the contract

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262 is executed or within 7 calendar ~~3 business~~ days after the date  
263 on which the insured or claimant has notified the insurer of the  
264 claim, whichever is later. During a state of emergency declared  
265 by the Governor or during the 1-year period after the date of  
266 loss, an insured or claimant may cancel a public adjuster's  
267 contract to adjust a claim without penalty or obligation within  
268 30 calendar days after the date on which the contract is  
269 executed or within 30 calendar days after the date on which the  
270 insured or claimant has notified the insurer of the claim,  
271 whichever is later. The public adjuster's contract must disclose  
272 to the insured or claimant his or her right to cancel the  
273 contract and advise the insured or claimant that notice of  
274 cancellation must be submitted in writing and sent by certified  
275 mail, return receipt requested, or other form of mailing that  
276 provides proof thereof, to the public adjuster at the address  
277 specified in the contract; ~~provided, during any state of~~  
278 ~~emergency as declared by the Governor and for 1 year after the~~  
279 ~~date of loss, the insured or claimant has 5 business days after~~  
280 ~~the date on which the contract is executed to cancel a public~~  
281 ~~adjuster's contract.~~

282 Section 11. Subsection (3) of section 626.916, Florida  
283 Statutes, is amended, and paragraph (f) is added to subsection  
284 (1) of that section, to read:

285 626.916 Eligibility for export.—

286 (1) No insurance coverage shall be eligible for export  
287 unless it meets all of the following conditions:

288 (f) The insured has signed a disclosure in substantially  
289 the following form: "You are agreeing to place coverage in the  
290 surplus lines market. Superior coverage may be available in the

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291 admitted market and at a lesser cost. Persons insured by surplus  
 292 lines carriers are not protected under the Florida Insurance  
 293 Guaranty Act with respect to any right of recovery for the  
 294 obligation of an insolvent unlicensed insurer."

295 (3) (a) Subsection (1) does not apply to wet marine and  
 296 transportation or aviation risks that ~~which~~ are subject to s.  
 297 626.917.

298 (b) Paragraphs (1) (a)-(d) do not apply to classes of  
 299 insurance which are subject to s. 627.062(3) (d)1. These classes  
 300 may be exportable under the following conditions:

301 1. The insurance must be placed only by or through a  
 302 surplus lines agent licensed in this state;

303 2. The insurer must be made eligible under s. 626.918; and

304 3. The insured has signed ~~must sign~~ a disclosure as  
 305 required under paragraph (1) (f) that substantially provides the  
 306 following: "You are agreeing to place coverage in the surplus  
 307 lines market. Superior coverage may be available in the admitted  
 308 market and at a lesser cost. Persons insured by surplus lines  
 309 carriers are not protected under the Florida Insurance Guaranty  
 310 Act with respect to any right of recovery for the obligation of  
 311 an insolvent unlicensed insurer." If the disclosure notice is  
 312 signed by the insured, the insured is presumed to have been  
 313 informed and to know that other coverage may be available, and,  
 314 with respect to the diligent-effort requirement under subsection  
 315 (1), there is no liability on the part of, and no cause of  
 316 action arises against, the retail agent presenting the form.

317 Section 12. Paragraph (z) of subsection (1) of section  
 318 626.9541, Florida Statutes, is amended to read:

319 626.9541 Unfair methods of competition and unfair or

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320 deceptive acts or practices defined.-

321 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE  
 322 ACTS.-The following are defined as unfair methods of competition  
 323 and unfair or deceptive acts or practices:

324 (z) Sliding.-Sliding is the act or practice of any of the  
 325 following:

326 1. Representing to the applicant that a specific ancillary  
 327 coverage or product is required by law in conjunction with the  
 328 purchase of insurance when such coverage or product is not  
 329 required.†

330 2. Representing to the applicant that a specific ancillary  
 331 coverage or product is included in the policy applied for  
 332 without an additional charge when such charge is required.† ~~or~~

333 3. Charging an applicant for a specific ancillary coverage  
 334 or product, in addition to the cost of the insurance coverage  
 335 applied for, without the informed consent of the applicant.

336 4. Initiating, effectuating, binding, or otherwise issuing  
 337 a policy of insurance without the prior informed consent of the  
 338 owner of the property to be insured.

339 5. Mailing, transmitting, or otherwise submitting by any  
 340 means an invoice for premium payment to a mortgagee or escrow  
 341 agent, for the purpose of effectuating an insurance policy,  
 342 without the prior informed consent of the owner of the property  
 343 to be insured.

344 Section 13. Subsection (3) of section 626.9741, Florida  
 345 Statutes, is amended to read:

346 626.9741 Use of credit reports and credit scores by  
 347 insurers.-

348 (3) An insurer must inform an applicant or insured, in the

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349 same medium as the application is taken, that a credit report or  
 350 score is being requested for underwriting or rating purposes.  
 351 The notification to the consumer must include the following  
 352 language: "The Department of Financial Services offers free  
 353 financial literacy programs to assist you in understanding how  
 354 credit scores are calculated, what factors are considered, and  
 355 how credit works. The Department's toll-free Insurance Consumer  
 356 Helpline is available to assist you with insurance-related  
 357 questions and inquiries. To learn more about the free financial  
 358 literacy programs or for help with insurance, call 1-877-693-  
 359 5236 or visit www.MyFloridaCFO.com." An insurer that makes an  
 360 adverse decision based, in whole or in part, upon a credit  
 361 report must provide at no charge, a copy of the credit report to  
 362 the applicant or insured or provide the applicant or insured  
 363 with the name, address, and telephone number of the consumer  
 364 reporting agency from which the insured or applicant may obtain  
 365 the credit report. The insurer must provide notification to the  
 366 consumer explaining the reasons for the adverse decision. The  
 367 reasons must be provided in sufficiently clear and specific  
 368 language so that a person can identify the basis for the  
 369 insurer's adverse decision. Such notification shall include a  
 370 description of the four primary reasons, or such fewer number as  
 371 existed, which were the primary influences of the adverse  
 372 decision. The use of generalized terms such as "poor credit  
 373 history," "poor credit rating," or "poor insurance score" does  
 374 not meet the explanation requirements of this subsection. A  
 375 credit score may not be used in underwriting or rating insurance  
 376 unless the scoring process produces information in sufficient  
 377 detail to permit compliance with the requirements of this

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378 subsection. It shall not be deemed an adverse decision if, due  
 379 to the insured's credit report or credit score, the insured  
 380 continues to receive a less favorable rate or placement in a  
 381 less favorable tier or company at the time of renewal except for  
 382 renewals or reunderwriting required by this section.  
 383 Section 14. Subsection (1) of section 626.9957, Florida  
 384 Statutes, is amended to read:  
 385 626.9957 Conduct prohibited; denial, revocation, or  
 386 suspension of registration.—  
 387 (1) As provided in s. 626.112, only a person licensed as an  
 388 insurance agent or customer representative may engage in the  
 389 solicitation of insurance. A person who engages in the  
 390 solicitation of insurance as described in s. 626.112(1) without  
 391 such license is subject to the penalties provided under s.  
 392 626.112(10) ~~s. 626.112(9)~~.  
 393 Section 15. Subsection (10) of section 627.062, Florida  
 394 Statutes, is amended to read:  
 395 627.062 Rate standards.—  
 396 (10) Any interest paid pursuant to s. 627.70131(7) ~~s.~~  
 397 ~~627.70131(5)~~ may not be included in the insurer's rate base and  
 398 may not be used to justify a rate or rate change.  
 399 Section 16. Subsection (6) is added to section 627.421,  
 400 Florida Statutes, to read:  
 401 627.421 Delivery of policy.—  
 402 (6) For personal lines residential property insurance  
 403 policies, the insurer shall, between March 3 and April 2 of each  
 404 year, inclusive, deliver a notification to all policyholders via  
 405 mail or e-mail which includes the Homeowner Claims Bill of  
 406 Rights and outlines the hurricane coverage included in the

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407 policy, including the hurricane deductible and the coverages and  
 408 exclusions.

409 Section 17. Section 627.502, Florida Statutes, is amended  
 410 to read:

411 627.502 "Industrial life insurance" defined; reporting;  
 412 prohibition on new policies after a certain date.—

413 (1) For the purposes of this code, "industrial life  
 414 insurance" is that form of life insurance written under policies  
 415 under which premiums are payable monthly or more often, bearing  
 416 the words "industrial policy" or "weekly premium policy" or  
 417 words of similar import imprinted upon the policies as part of  
 418 the descriptive matter, and issued by an insurer that which, as  
 419 to such industrial life insurance, is operating under a system  
 420 of collecting a debit by its agent.

421 (2) Every life insurer servicing existing transacting  
 422 industrial life insurance shall report to the office all annual  
 423 statement data regarding the exhibit of life insurance,  
 424 including relevant information for industrial life insurance.

425 (3) Beginning July 1, 2020, a life insurer may not write a  
 426 new policy of industrial life insurance.

427 Section 18. Section 627.70131, Florida Statutes, is amended  
 428 to read:

429 627.70131 Insurer's duty to acknowledge communications  
 430 regarding claims; investigation.—

431 (1) (a) Upon an insurer's receiving a communication with  
 432 respect to a claim, the insurer shall, within 14 calendar days,  
 433 review and acknowledge receipt of such communication unless  
 434 payment is made within that period of time or unless the failure  
 435 to acknowledge is caused by factors beyond the control of the

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436 insurer which reasonably prevent such acknowledgment. If the  
 437 acknowledgment is not in writing, a notification indicating  
 438 acknowledgment shall be made in the insurer's claim file and  
 439 dated. A communication made to or by a representative ~~an agent~~  
 440 of an insurer with respect to a claim shall constitute  
 441 communication to or by the insurer.

442 (b) As used in this subsection, the term "representative"  
 443 ~~"agent"~~ means any person to whom an insurer has granted  
 444 authority or responsibility to receive or make such  
 445 communications with respect to claims on behalf of the insurer.

446 (c) This subsection shall not apply to claimants  
 447 represented by counsel beyond those communications necessary to  
 448 provide forms and instructions.

449 (2) Such acknowledgment shall be responsive to the  
 450 communication. If the communication constitutes a notification  
 451 of a claim, unless the acknowledgment reasonably advises the  
 452 claimant that the claim appears not to be covered by the  
 453 insurer, the acknowledgment shall provide necessary claim forms,  
 454 and instructions, including an appropriate telephone number.

455 (3) (a) Unless otherwise provided by the policy of insurance  
 456 or by law, within 10 business working days after an insurer  
 457 receives proof of loss statements, the insurer shall begin such  
 458 investigation as is reasonably necessary unless the failure to  
 459 begin such investigation is caused by factors beyond the control  
 460 of the insurer which reasonably prevent the commencement of such  
 461 investigation.

462 (b) If such investigation involves a physical inspection of  
 463 the property, the licensed adjuster assigned by the insurer must  
 464 provide the policyholder with his or her name, license number,

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465 and contact information.

466 (c) An unedited copy of any report received by the insurer,  
 467 which was produced by the licensed adjuster based upon the  
 468 physical inspection of the property, must be provided to the  
 469 policyholder electronically or as a physical copy within 7 days  
 470 after receipt by the insurer.

471 (d) If an insurer assigns the claim to a different licensed  
 472 adjuster after receipt of a report from the adjuster who  
 473 performed the physical inspection, the insurer must, within 7  
 474 days after changing the licensed insurance adjuster assigned to  
 475 a claim, provide the name, license number, and contact  
 476 information of the new adjuster to the policyholder. The  
 477 notification may be sent electronically or via mail. If the  
 478 notification is a physical letter, it must be postmarked within  
 479 7 days after the change in adjuster. Any subsequent change to  
 480 the assigned adjuster must be handled in accordance with this  
 481 paragraph.

482 (4) An insurer shall establish a process by which the agent  
 483 of record for an insurance policy is provided access to  
 484 information provided to the policyholder under subsection (3) in  
 485 order to assist the agent of record in answering the  
 486 policyholder's questions regarding claims. As used in this  
 487 subsection, the term "agent of record" means the agent named on  
 488 the declarations page of the insurance policy.

489 (5) For purposes of this section, the term "insurer" means  
 490 any residential property insurer.

491 (6) (a) When providing a preliminary or partial estimate of  
 492 damage regarding a claim, an insurer shall include with the  
 493 estimate the following statement printed in at least 12-point

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494 bold, uppercase type: THIS ESTIMATE REPRESENTS OUR CURRENT  
 495 EVALUATION OF THE LOSS TO YOUR INSURED PROPERTY AND MAY BE  
 496 REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE  
 497 QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR  
 498 CLAIM, WE ENCOURAGE YOU TO CONTACT US.

499 (b) When providing a preliminary or partial payment on a  
 500 claim, an insurer shall include with the payment the following  
 501 statement printed in at least 12-point bold, uppercase type: WE  
 502 ARE CONTINUING TO EVALUATE YOUR CLAIM INVOLVING YOUR INSURED  
 503 PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE  
 504 QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR  
 505 CLAIM, WE ENCOURAGE YOU TO CONTACT US.

506 (7) ~~(5)~~ (a) Within 90 calendar days after an insurer receives  
 507 notice of an initial, reopened, or supplemental property  
 508 insurance claim from a policyholder, the insurer shall pay or  
 509 deny such claim or a portion of the claim unless the failure to  
 510 pay is caused by factors beyond the control of the insurer which  
 511 reasonably prevent such payment. Any payment of an initial or  
 512 supplemental claim or portion of such claim made 90 calendar  
 513 days after the insurer receives notice of the claim, or made  
 514 more than 15 days after there are no longer factors beyond the  
 515 control of the insurer which reasonably prevented such payment,  
 516 whichever is later, bears interest at the rate set forth in s.  
 517 55.03. Interest begins to accrue from the date the insurer  
 518 receives notice of the claim. The provisions of this subsection  
 519 may not be waived, voided, or nullified by the terms of the  
 520 insurance policy. If there is a right to prejudgment interest,  
 521 the insured shall select whether to receive prejudgment interest  
 522 or interest under this subsection. Interest is payable when the

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523 claim or portion of the claim is paid. Failure to comply with  
 524 this subsection constitutes a violation of this code. However,  
 525 failure to comply with this subsection does not form the sole  
 526 basis for a private cause of action.

527 (b) Notwithstanding subsection (5) ~~(4)~~, for purposes of  
 528 this subsection, the term "claim" means any of the following:

529 1. A claim under an insurance policy providing residential  
 530 coverage as defined in s. 627.4025(1);

531 2. A claim for structural or contents coverage under a  
 532 commercial property insurance policy if the insured structure is  
 533 10,000 square feet or less; or

534 3. A claim for contents coverage under a commercial tenant  
 535 policy if the insured premises is 10,000 square feet or less.

536 (c) This subsection shall not apply to claims under an  
 537 insurance policy covering nonresidential commercial structures  
 538 or contents in more than one state.

539 (8) This section applies to surplus lines insurers and  
 540 surplus lines insurance authorized under ss. 626.913-626.937.

541 Section 19. Section 627.7031, Florida Statutes, is created  
 542 to read:

543 627.7031 Foreign venue clauses prohibited.—A property  
 544 insurance policy sold in this state after July 1, 2020, may not  
 545 require an insured to pursue dispute resolution through  
 546 litigation, arbitration, or mediation outside this state. This  
 547 section applies to surplus lines insurers and surplus lines  
 548 insurance authorized under ss. 626.913-626.937.

549 Section 20. Section 627.7142, Florida Statutes, is amended  
 550 to read:

551 627.7142 Homeowner Claims Bill of Rights.—An insurer

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552 issuing a personal lines residential property insurance policy  
 553 in this state must provide a Homeowner Claims Bill of Rights to  
 554 a policyholder within 14 days after receiving an initial  
 555 communication with respect to a claim, unless the claim follows  
 556 an event that is the subject of a declaration of a state of  
 557 emergency by the Governor. The purpose of the bill of rights is  
 558 to summarize, in simple, nontechnical terms, existing Florida  
 559 law regarding the rights of a personal lines residential  
 560 property insurance policyholder who files a claim of loss. The  
 561 Homeowner Claims Bill of Rights is specific to the claims  
 562 process and does not represent all of a policyholder's rights  
 563 under Florida law regarding the insurance policy. The Homeowner  
 564 Claims Bill of Rights does not create a civil cause of action by  
 565 any individual policyholder or class of policyholders against an  
 566 insurer or insurers. The failure of an insurer to properly  
 567 deliver the Homeowner Claims Bill of Rights is subject to  
 568 administrative enforcement by the office but is not admissible  
 569 as evidence in a civil action against an insurer. The Homeowner  
 570 Claims Bill of Rights does not enlarge, modify, or contravene  
 571 statutory requirements, including, but not limited to, ss.  
 572 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does  
 573 not prohibit an insurer from exercising its right to repair  
 574 damaged property in compliance with the terms of an applicable  
 575 policy or ss. 627.7011(5)(e) and 627.702(7). The Homeowner  
 576 Claims Bill of Rights must state:

## HOMEOWNER CLAIMS

## BILL OF RIGHTS

580 This Bill of Rights is specific to the claims process

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581 and does not represent all of your rights under  
 582 Florida law regarding your policy. There are also  
 583 exceptions to the stated timelines when conditions are  
 584 beyond your insurance company's control. This document  
 585 does not create a civil cause of action by an  
 586 individual policyholder, or a class of policyholders,  
 587 against an insurer or insurers and does not prohibit  
 588 an insurer from exercising its right to repair damaged  
 589 property in compliance with the terms of an applicable  
 590 policy.

591  
 592 YOU HAVE THE RIGHT TO:

593 1. Receive from your insurance company an  
 594 acknowledgment of your reported claim within 14  
 595 calendar days after the time you communicated the  
 596 claim.

597 2. Upon written request, receive from your  
 598 insurance company within 30 days after you have  
 599 submitted a complete proof-of-loss statement to your  
 600 insurance company, confirmation that your claim is  
 601 covered in full, partially covered, or denied, or  
 602 receive a written statement that your claim is being  
 603 investigated.

604 3. Within 7 calendar days, receive notification  
 605 from your insurance company if there has been a change  
 606 in the company adjuster who is assigned to your claim.  
 607 The notification must include the assigned adjuster's  
 608 contact information.

609 4. Within 90 calendar days, subject to any dual

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610 interest noted in the policy, receive full settlement  
 611 payment for your claim or payment of the undisputed  
 612 portion of your claim, or your insurance company's  
 613 denial of your claim.

614 5. Receive payment of interest from your  
 615 insurance company, which begins accruing from the date  
 616 your claim is filed if your insurance company does not  
 617 pay full settlement of your claim or the undisputed  
 618 portion of your claim or does not deny your claim  
 619 within 90 calendar days after your claim is filed. The  
 620 interest must be paid when your claim or undisputed  
 621 portion of your claim is paid.

622 ~~6.4.~~ Free mediation of your disputed claim by the  
 623 Florida Department of Financial Services, Division of  
 624 Consumer Services, under most circumstances and  
 625 subject to certain restrictions.

626 ~~7.5.~~ Neutral evaluation of your disputed claim,  
 627 if your claim is for damage caused by a sinkhole and  
 628 is covered by your policy.

629 ~~8.6.~~ Contact the Florida Department of Financial  
 630 Services, Division of Consumer Services' toll-free  
 631 helpline for assistance with any insurance claim or  
 632 questions pertaining to the handling of your claim.  
 633 You can reach the Helpline by phone at...(toll-free  
 634 phone number)..., or you can seek assistance online at  
 635 the Florida Department of Financial Services, Division  
 636 of Consumer Services' website at...(website  
 637 address)....

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639 YOU ARE ADVISED TO:

640 1. Contact your insurance company before entering  
641 into any contract for repairs to confirm any managed  
642 repair policy provisions or optional preferred  
643 vendors.

644 2. Make and document emergency repairs that are  
645 necessary to prevent further damage. Keep the damaged  
646 property, if feasible, keep all receipts, and take  
647 photographs or video of damage before and after any  
648 repairs.

649 3. Carefully read any contract that requires you  
650 to pay out-of-pocket expenses or a fee that is based  
651 on a percentage of the insurance proceeds that you  
652 will receive for repairing or replacing your property.

653 4. Confirm that the contractor you choose is  
654 licensed to do business in Florida. You can verify a  
655 contractor's license and check to see if there are any  
656 complaints against him or her by calling the Florida  
657 Department of Business and Professional Regulation.  
658 You should also ask the contractor for references from  
659 previous work.

660 5. Require all contractors to provide proof of  
661 insurance before beginning repairs.

662 6. Take precautions if the damage requires you to  
663 leave your home, including securing your property and  
664 turning off your gas, water, and electricity, and  
665 contacting your insurance company and provide a phone  
666 number where you can be reached.

667 Section 21. Paragraph (a) of subsection (1) and subsection

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668 (6) of section 631.57, Florida Statutes, are amended to read:

669 631.57 Powers and duties of the association.—

670 (1) The association shall:

671 (a)1. Be obligated to the extent of the covered claims  
672 existing:

673 a. Prior to adjudication of insolvency and arising within  
674 30 days after the determination of insolvency;

675 b. Before the policy expiration date if less than 30 days  
676 after the determination; or

677 c. Before the insured replaces the policy or causes its  
678 cancellation, if she or he does so within 30 days of the  
679 determination.

680 2. The obligation under subparagraph 1. includes only the  
681 amount of each covered claim which is ~~in excess of \$100 and is~~  
682 less than \$300,000, except that policies providing coverage for  
683 homeowner's insurance shall provide for an additional \$200,000  
684 for the portion of a covered claim which relates only to the  
685 damage to the structure and contents.

686 3.a. Notwithstanding subparagraph 2., the obligation under  
687 subparagraph 1. for policies covering condominium associations  
688 or homeowners' associations, which associations have a  
689 responsibility to provide insurance coverage on residential  
690 units within the association, shall include that amount of each  
691 covered property insurance claim which is less than \$100,000  
692 multiplied by the number of condominium units or other  
693 residential units; however, as to homeowners' associations, this  
694 sub-subparagraph applies only to claims for damage or loss to  
695 residential units and structures attached to residential units.

696 b. Notwithstanding sub-subparagraph a., the association has

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697 no obligation to pay covered claims that are to be paid from the  
 698 proceeds of bonds issued under s. 631.695. However, the  
 699 association shall assign and pledge the first available moneys  
 700 from all or part of the assessments to be made under paragraph  
 701 (3) (a) to or on behalf of the issuer of such bonds for the  
 702 benefit of the holders of such bonds. The association shall  
 703 administer any such covered claims and present valid covered  
 704 claims for payment in accordance with the provisions of the  
 705 assistance program in connection with which such bonds have been  
 706 issued.

707 4. In no event shall the association be obligated to a  
 708 policyholder or claimant in an amount in excess of the  
 709 obligation of the insolvent insurer under the policy from which  
 710 the claim arises.

711 (6) The association may extend the time limits specified in  
 712 paragraph (1) (a) by up to an additional 60 days ~~or waive the~~  
 713 ~~applicability of the \$100 deductible specified in paragraph~~  
 714 ~~(1) (a)~~ if the board determines that either or both such actions  
 715 are necessary to facilitate the bulk assumption of obligations.

716 Section 22. Section 648.30, Florida Statutes, is amended to  
 717 read:

718 648.30 Licensure and appointment required; prohibited acts;  
 719 penalties.-

720 (1) A person may not act in the capacity of a bail bond  
 721 agent or temporary bail bond agent or perform any of the  
 722 functions, duties, or powers prescribed for bail bond agents or  
 723 temporary bail bond agents under this chapter unless that person  
 724 is qualified, licensed, and appointed as provided in this  
 725 chapter.

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726 (2) A person may not represent himself or herself to be a  
 727 bail enforcement agent, bounty hunter, or other similar title in  
 728 this state.

729 (3) A person, other than a certified law enforcement  
 730 officer, may not apprehend, detain, or arrest a principal on a  
 731 bond, wherever issued, unless that person is qualified,  
 732 licensed, and appointed as provided in this chapter or licensed  
 733 as a bail bond agent or bail bond enforcement agent, or holds an  
 734 equivalent license by the state where the bond was written.

735 (4) Any person who violates this section commits a felony  
 736 of the third degree, punishable as provided in s. 775.082, s.  
 737 775.083, or s. 775.084.

738 (5) Any licensee under this chapter who knowingly aids or  
 739 abets an unlicensed person in violating this section commits a  
 740 felony of the third degree, punishable as provided in s.  
 741 775.082, s. 775.083, or s. 775.084.

742 Section 23. Paragraphs (b) and (c) of subsection (4) and  
 743 subsections (1) and (10) of section 717.124, Florida Statutes,  
 744 are amended to read:

745 717.124 Unclaimed property claims.-

746 (1) Any person, excluding another state, claiming an  
 747 interest in any property paid or delivered to the department  
 748 under this chapter may file with the department a claim on a  
 749 form prescribed by the department and verified by the claimant  
 750 or the claimant's representative. The claimant's representative  
 751 must be an attorney licensed to practice law in this state, a  
 752 licensed Florida-certified public accountant, or a private  
 753 investigator licensed under chapter 493. The claimant's  
 754 representative must be registered with the department under this

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755 chapter. The claimant, or the claimant's representative, shall  
 756 provide the department with a legible copy of a valid driver  
 757 license of the claimant at the time the original claim form is  
 758 filed. If the claimant has not been issued a valid driver  
 759 license at the time the original claim form is filed, the  
 760 department shall be provided with a legible copy of a  
 761 photographic identification of the claimant issued by the United  
 762 States, a state or territory of the United States, a foreign  
 763 nation, or a political subdivision or agency thereof or other  
 764 evidence deemed acceptable by the department by rule. In lieu of  
 765 photographic identification, a notarized sworn statement by the  
 766 claimant may be provided which affirms the claimant's identity  
 767 and states the claimant's full name and address. The claimant  
 768 must produce to the notary photographic identification of the  
 769 claimant issued by the United States, a state or territory of  
 770 the United States, a foreign nation, or a political subdivision  
 771 or agency thereof or other evidence deemed acceptable by the  
 772 department by rule. The notary shall indicate the notary's full  
 773 address on the notarized sworn statement. Any claim filed  
 774 without the required identification or the sworn statement with  
 775 the original claim form and the original Florida Uniform  
 776 Unclaimed Property Recovery Agreement or Florida Uniform  
 777 Property Purchase Agreement ~~power of attorney or purchase~~  
 778 ~~agreement~~, if applicable, is void.

779 (a) Within 90 days after receipt of a claim, the department  
 780 may return any claim that provides for the receipt of fees and  
 781 costs greater than that permitted under this chapter or that  
 782 contains any apparent errors or omissions. The department may  
 783 also request that the claimant or the claimant's representative

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784 provide additional information. The department shall retain a  
 785 copy or electronic image of the claim.

786 (b) A claimant or the claimant's representative shall be  
 787 deemed to have withdrawn a claim if no response to the  
 788 department's request for additional information is received by  
 789 the department within 60 days after the notification of any  
 790 apparent errors or omissions.

791 (c) Within 90 days after receipt of the claim, or the  
 792 response of the claimant or the claimant's representative to the  
 793 department's request for additional information, whichever is  
 794 later, the department shall determine each claim. Such  
 795 determination shall contain a notice of rights provided by ss.  
 796 120.569 and 120.57. The 90-day period shall be extended by 60  
 797 days if the department has good cause to need additional time or  
 798 if the unclaimed property:

799 1. Is owned by a person who has been a debtor in  
 800 bankruptcy;

801 2. Was reported with an address outside of the United  
 802 States;

803 3. Is being claimed by a person outside of the United  
 804 States; or

805 4. Contains documents filed in support of the claim that  
 806 are not in the English language and have not been accompanied by  
 807 an English language translation.

808 (d) The department shall deny any claim under which the  
 809 claimant's representative has refused to authorize the  
 810 department to reduce the fees and costs to the maximum permitted  
 811 under this chapter.

812 (4)

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813 (b) If an owner authorizes an attorney licensed to practice  
 814 law in this state, Florida-certified public accountant, or  
 815 private investigator licensed under chapter 493, and registered  
 816 with the department under this chapter, to claim the unclaimed  
 817 property on the owner's behalf, the department is authorized to  
 818 make distribution of the property or money in accordance with  
 819 the Florida Uniform Unclaimed Property Recovery Agreement or  
 820 Florida Uniform Property Purchase Agreement under s. 717.135  
 821 ~~such power of attorney~~. The original Florida Uniform Unclaimed  
 822 Property Recovery Agreement or Florida Uniform Property Purchase  
 823 Agreement ~~power of attorney~~ must be executed by the claimant or  
 824 seller ~~owner~~ and must be filed with the department.

825 (c)1. Payments of approved claims for unclaimed cash  
 826 accounts shall be made to the owner after deducting any fees and  
 827 costs authorized pursuant to a Florida Uniform Unclaimed  
 828 Property Recovery Agreement ~~written power of attorney~~. The  
 829 contents of a safe-deposit box shall be delivered directly to  
 830 the claimant ~~notwithstanding any power of attorney or agreement~~  
 831 ~~to the contrary~~.

832 2. Payments of fees and costs authorized pursuant to a  
 833 Florida Uniform Unclaimed Property Recovery Agreement ~~written~~  
 834 ~~power of attorney~~ for approved claims must ~~shall~~ be made or  
 835 issued to the law firm of the designated attorney licensed to  
 836 practice law in this state, the public accountancy firm of the  
 837 licensed Florida-certified public accountant, or the designated  
 838 employing private investigative agency licensed by this state.  
 839 Such payments shall be made by electronic funds transfer and may  
 840 be made on such periodic schedule as the department may define  
 841 by rule, provided the payment intervals do not exceed 31 days.

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842 Payment made to an attorney licensed in this state, a Florida-  
 843 certified public accountant, or a private investigator licensed  
 844 under chapter 493, operating individually or as a sole  
 845 practitioner, shall be to the attorney, certified public  
 846 accountant, or private investigator.

847 (10) Notwithstanding any other provision of this chapter,  
 848 the department may develop a process by which a registered  
 849 claimant's representative or a buyer of unclaimed property may  
 850 electronically submit to the department an electronic image of a  
 851 completed claim and claims-related documents pursuant to this  
 852 chapter, including a Florida Uniform Unclaimed Property Recovery  
 853 Agreement or Florida Uniform Property Purchase Agreement ~~a~~  
 854 ~~limited power of attorney or purchase agreement~~ that has been  
 855 manually signed and dated by a claimant or seller pursuant to s.  
 856 717.135 ~~or s. 717.1351~~, after the claimant's representative or  
 857 the buyer of unclaimed property receives the original documents  
 858 provided by the claimant or the seller for any claim. Each claim  
 859 filed by a registered claimant's representative or a buyer of  
 860 unclaimed property must include a statement by the claimant's  
 861 representative or the buyer of unclaimed property attesting that  
 862 all documents are true copies of the original documents and that  
 863 all original documents are physically in the possession of the  
 864 claimant's representative or the buyer of unclaimed property.  
 865 All original documents must be kept in the original form, by  
 866 claim number, under the secure control of the claimant's  
 867 representative or the buyer of unclaimed property and must be  
 868 available for inspection by the department in accordance with s.  
 869 717.1315. The department may adopt rules to implement this  
 870 subsection.

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871 Section 24. Subsection (2) of section 717.12404, Florida  
872 Statutes, is amended to read:

873 717.12404 Claims on behalf of a business entity or trust.—

874 (2) Claims on behalf of a dissolved corporation, a business  
875 entity other than an active corporation, or a trust must include  
876 a legible copy of a valid driver license of the person acting on  
877 behalf of the dissolved corporation, business entity other than  
878 an active corporation, or trust. If the person has not been  
879 issued a valid driver license, the department shall be provided  
880 with a legible copy of a photographic identification of the  
881 person issued by the United States, a foreign nation, or a  
882 political subdivision or agency thereof. In lieu of photographic  
883 identification, a notarized sworn statement by the person may be  
884 provided which affirms the person's identity and states the  
885 person's full name and address. The person must produce his or  
886 her photographic identification issued by the United States, a  
887 state or territory of the United States, a foreign nation, or a  
888 political subdivision or agency thereof or other evidence deemed  
889 acceptable by the department by rule. The notary shall indicate  
890 the notary's full address on the notarized sworn statement. Any  
891 claim filed without the required identification or the sworn  
892 statement with the original claim form and the original Florida  
893 Uniform Unclaimed Property Recovery Agreement or Florida Uniform  
894 Property Purchase Agreement ~~power of attorney~~, if applicable, is  
895 void.

896 Section 25. Subsection (1) of section 717.1315, Florida  
897 Statutes, is amended to read:

898 717.1315 Retention of records by claimant's representatives  
899 and buyers of unclaimed property.—

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900 (1) Every claimant's representative and buyer of unclaimed  
901 property shall keep and use in his or her business such books,  
902 accounts, and records of the business conducted under this  
903 chapter to enable the department to determine whether such  
904 person is complying with this chapter and the rules adopted by  
905 the department under this chapter. Every claimant's  
906 representative and buyer of unclaimed property shall preserve  
907 such books, accounts, and records, including every Florida  
908 Uniform Unclaimed Property Recovery Agreement or Florida Uniform  
909 Property Purchase Agreement ~~power of attorney or agreement~~  
910 between the owner and such claimant's representative or buyer,  
911 for at least 3 years after the date of the initial ~~power of~~  
912 ~~attorney or~~ agreement.

913 Section 26. Paragraph (j) of subsection (1) of section  
914 717.1322, Florida Statutes, is amended to read:

915 717.1322 Administrative and civil enforcement.—

916 (1) The following acts are violations of this chapter and  
917 constitute grounds for an administrative enforcement action by  
918 the department in accordance with the requirements of chapter  
919 120 and for civil enforcement by the department in a court of  
920 competent jurisdiction:

921 (j) Requesting or receiving compensation for notifying a  
922 person of his or her unclaimed property or assisting another  
923 person in filing a claim for unclaimed property, unless the  
924 person is an attorney licensed to practice law in this state, a  
925 Florida-certified public accountant, or a private investigator  
926 licensed under chapter 493, or entering into, or making a  
927 solicitation to enter into, an agreement ~~a power of attorney~~ to  
928 file a claim for unclaimed property owned by another, or a

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929 contract or agreement to purchase unclaimed property, unless  
 930 such person is registered with the department pursuant to this  
 931 chapter and an attorney licensed to practice law in this state  
 932 in the regular practice of her or his profession, a Florida-  
 933 certified public accountant who is acting within the scope of  
 934 the practice of public accounting as defined in chapter 473, or  
 935 a private investigator licensed under chapter 493. This  
 936 subsection does not apply to a person who has been granted a  
 937 durable power of attorney to convey and receive all of the real  
 938 and personal property of the owner, is the court-appointed  
 939 guardian of the owner, has been employed as an attorney or  
 940 qualified representative to contest the department's denial of a  
 941 claim, or has been employed as an attorney to probate the estate  
 942 of the owner or an heir or legatee of the owner.

943 Section 27. Section 717.135, Florida Statutes, is amended  
 944 to read:

945 (Substantial rewording of section. See  
 946 s. 717.135, F.S., for present text.)

947 717.135 Recovery agreements and purchase agreements for  
 948 claims filed by claimant's representative; fees and costs.-

949 (1) In order to protect the interests of owners of  
 950 unclaimed property, the department shall adopt by rule a form  
 951 entitled "Florida Uniform Unclaimed Property Recovery Agreement"  
 952 and a form entitled "Florida Uniform Property Purchase  
 953 Agreement."

954 (2) The Florida Uniform Unclaimed Property Recovery  
 955 Agreement form and the Florida Uniform Property Purchase  
 956 Agreement form must include and disclose:

957 (a) The total dollar amount of unclaimed property accounts

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958 claimed or sold.

959 (b) Either the total percentage of all authorized fees and  
 960 costs to be paid to the claimant's representative or the  
 961 percentage of the value of the property to be paid as net gain  
 962 to the purchasing registered claimant's representative.

963 (c) Either the total dollar amount to be deducted and  
 964 received from the claimant as fees and costs by the claimant's  
 965 representative or the total net dollar amount to be received by  
 966 the purchasing registered claimant's representative.

967 (d) The net dollar amount to be received by the claimant or  
 968 seller.

969 (e) For each account claimed, the unclaimed property  
 970 account number and name of the apparent owner, as listed on the  
 971 department's database.

972 (f) For the Florida Uniform Property Purchase Agreement, a  
 973 statement that the purchase price will be remitted to the seller  
 974 within 30 days after the execution of the form by the seller.

975 (g) The name, address, e-mail address, phone number, and  
 976 license number of the registered claimant's representative.

977 (h) The manual signature of the claimant or seller and the  
 978 date signed.

979 (i) The social security number or taxpayer identification  
 980 number of the claimant or seller, if available. A number is  
 981 available if one has been issued to the claimant or seller.

982 (j) A limit of total fees and costs, or the total discount  
 983 amount in the case of a purchase agreement, to no more than 20  
 984 percent of the claimed amount.

985 (3) For a Florida Uniform Property Purchase Agreement form,  
 986 proof that the seller has received payment must be filed with

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987 the department along with the claim. If proof of payment is not  
 988 provided, the claim is void.

989 (4) A registered claimant's representative shall use the  
 990 Florida Uniform Unclaimed Property Recovery Agreement form or  
 991 the Florida Uniform Property Purchase Agreement form as the  
 992 exclusive means of engaging with a claimant or seller to file a  
 993 claim with the department.

994 (5) Fees and costs may be owed or paid to a registered  
 995 claimant's representative only pursuant to the forms authorized  
 996 by this section and upon approval of the claim filed thereby.

997 (6) A claimant's representative may not use or distribute  
 998 any other agreement of any type with respect to the claimant or  
 999 seller which relates to unclaimed property accounts held by the  
 1000 department or the Chief Financial Officer other than the  
 1001 agreements authorized by this section. Any agreement that is not  
 1002 authorized by this section is null and void.

1003 (7) The forms under subsection (1):

1004 (a) May not contain language that makes the agreement  
 1005 irrevocable; and

1006 (b) May not contain language that creates an assignment of  
 1007 any unclaimed property held by the department.

1008 (8) This section does not supersede the conflicting claims  
 1009 provisions of s. 717.1241.

1010 (9) At the time a claim is approved, the department may pay  
 1011 any additional account that is owned by the claimant but has not  
 1012 been claimed at the time of approval, provided that no  
 1013 subsequent claim has been filed and is pending for the claimant  
 1014 at the time of approval.

1015 Section 28. Section 717.1351, Florida Statutes, is

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1016 repealed.

1017 Section 29. This act shall take effect upon becoming a law.

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## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Military and Veterans Affairs and Space, *Chair*  
Children, Families, and Elder Affairs  
Commerce and Tourism  
Environment and Natural Resources

### JOINT COMMITTEE:

Joint Administrative Procedures Committee

**SENATOR TOM A. WRIGHT**  
14th District

February 4, 2020

The Honorable Lizbeth Benacquisto  
400, Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Re: Senate Bill 1492 – Consumer Protection

Dear Chair Benacquisto:

Senate Bill 1492, relating to Consumer Protection has been referred to the Committee on Rules. I am requesting your consideration on placing SB 1492 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tom A. Wright".

Tom A. Wright, District 14

cc: John B. Phelps, Staff Director of the Committee on Rules  
Cynthia Futch, Administrative Assistant of the Committee on Rules

### REPLY TO:

4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630  
 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

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

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26  
Meeting Date

1492  
Bill Number (if applicable)

730048  
Amendment Barcode (if applicable)

Topic Consumer Protection

Name Meredith Stanfield

Job Title Director of Legislative & Cabinet Affairs

Address PL 11

Phone (850) 413-2890

Street Tallahassee State FL Zip 32399

City City State Zip Email Meredith.Stanfield@myfloridacfo.com

Speaking:  For  Against  Information

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

Representing CFO Jimmy Patronis

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/24/20  
Meeting Date

1492  
Bill Number (if applicable)  
292600  
Amendment Barcode (if applicable)

Topic Consumer Protection

Name Richie Kidwell

Job Title President

Address 160 E. Lake Brantley Rd.

Phone 321-219-9060

Longwood FL 32719

City State Zip

Email richie

Speaking:  For  Against  Information

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

Representing Restoration Assoc. of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-26-20  
Meeting Date

1492  
Bill Number (if applicable)

292600  
Amendment Barcode (if applicable)

Topic Preferred Vendors

Name Christine Ashburn

Job Title Chief - Communications, Legislative & External Affairs

Address 2103 Maryland Circle

Phone 850-728-7255

Street

Tallahassee

FL

32303

Email christine.ashburn@

City

State

Zip

citizensfla.com

Speaking:  For  Against  Information

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

Representing Citizens Property Insurance Corporation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/20

Meeting Date

1492

Bill Number (if applicable)

Topic CONSUMER Protection

Amendment Barcode (if applicable)

Name Allison Hess Sitte

Job Title LAD

Address 200 E. Gaines Street

Phone 413-5005

Street

Tallahassee

FL

32399

Email allison.sitte@flor.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Office of Insurance Regulation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/20  
Meeting Date

SB 1492  
Bill Number (if applicable)

Topic Consumer Protections

Amendment Barcode (if applicable)

Name TASHA CARTER

Job Title FL'S INSURE CONSUMER ADVOCATE

Address 200 E GAINES STREET  
Street

Phone 850-413-2868

TALLAHASSEE, FL 32399  
City State Zip

Email TASHA.CARTER@myfloridalegal.com

Speaking:  For  Against  Information

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

Representing FL'S INSURE CONSUMER ADVOCATE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

2-26-20

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

1492

Meeting Date

Bill Number (if applicable)

Topic Consumer Protection

Amendment Barcode (if applicable)

Name Meredith Stanfield

Job Title Director, Legislative & Cabinet Affairs

Address PL 11, Capitol

Phone 413-2890

Street

Tallahassee

FL

32399

Email meredith.stanfield@myfloridacfo.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing CFO Jimmy Patronis

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-26-20

Meeting Date

1492

Bill Number (if applicable)

Topic Consumer Protection

Amendment Barcode (if applicable)

Name Christine Ashburn

Job Title Chief - Communications, Legislative & External Affairs

Address 2103 Maryland Circle

Phone 850-513-3746

Street

Tallahassee

FL

32303

Email christine.ashburn

City

State

Zip

@citizensfla.com

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [x] In Support [ ] Against

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

Representing Citizens Property Insurance Corporation

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-26-20

Meeting Date

1492

Bill Number (if applicable)

Topic Consumer Protection

Amendment Barcode (if applicable)

Name Greg Thomas

Job Title Division Director - Consumer Services + <sup>Insurance</sup> Agent + Agency Services

Address PL 11 The Capitol

Phone 850 413-2890

Street

Tallahassee

City

FL

State

32399

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Department of Financial Services

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: CS/SB 358

INTRODUCER: Judiciary Committee and Senator Berman

SUBJECT: Decedents' Property

DATE: February 24, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
3.	<u>Stallard</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 358 amends several sections of the probate code relating to compensation of attorneys who serve as personal representatives, which persons may sue to recover property for the estate, conflicts of interest by personal representatives, and notice in probate proceedings. The bill also amends the trust code regarding compensation of attorneys who serve as trustees.

More specifically, the bill:

- Prohibits an attorney who prepared or supervised the preparation of a will from being compensated as a personal representative of the estate unless the attorney is a relative of the decedent or makes specified disclosures to the testator before the will is prepared;
- Prohibits an attorney who prepared or supervised the preparation of a trust from being compensated as a trustee unless the attorney is a relative of the "settlor" (trust creator) or makes specified disclosures to the settlor before the trust is created;
- Provides that causes of action that a decedent held at death are estate property, and therefore subject to the control and possession of the personal representative (not the beneficiaries);
- Brings more types of transactions involving a personal representative's conflict of interest under the statute that renders these transactions voidable by an interested person;
- Clarifies what constitutes sufficient notice for a court to exercise personal jurisdiction over a person in a probate proceeding; and
- Categorizes as tangible property bullion and coins, such as collectible coins, that are not used as money.

## II. Present Situation:

### Conflict of Interests by Personal Representatives

Several types of transactions that involve a conflict of a personal representative's interests are voidable by an interested person, except one who has consented after fair disclosure.<sup>1</sup> However, transactions that involve a conflict of the personal representative's interests are not voidable if the will or a contract entered into by the decedent expressly authorized the transaction, or if it is authorized by a court after notice to interested persons.<sup>2</sup>

### Compensation of Attorney Who Also Serves as Personal Representative or Trustee

An attorney licensed by The Florida Bar who serves as a personal representative of an estate and has rendered legal services in connection with the administration of the estate is allowed a fee for the legal services in addition to his or her fee as personal representative.<sup>3</sup> However, the fee for legal services must be taken into account when determining the attorney's compensation for non-legal services as personal representative.<sup>4</sup>

Similarly, an attorney who provides legal services in his or her administration of the trust may accept reasonable compensation for the legal services in addition to his or her reasonable compensation as a trustee.<sup>5</sup>

### Acquiring Jurisdiction Over a Person by Service of Formal Notice

Section 731.301(2), F.S., provides that, in a probate proceeding, "formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person's interest in the estate or in the decedent's protected homestead." The courts have interpreted this to include jurisdiction over a person in an adversarial proceeding, including one in which an out-of-state law firm providing legal services for a Florida estate may be forced to pay money back to the estate.<sup>6</sup>

However, the Real Property, Probate, and Trust Law Section of The Florida Bar (the Section) asserts that the personal jurisdiction contemplated in s. 731.301(2), F.S., does not include this type of proceeding.<sup>7</sup> Rather, the Section asserts that formal notice is sufficient for the court to acquire jurisdiction over a person for the purpose of determining the person's rights to estate property.<sup>8</sup>

---

<sup>1</sup> Section 733.610, F.S.

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

<sup>3</sup> Section 733.617, F.S.

<sup>4</sup> Section 733.612(19), F.S.

<sup>5</sup> Section 733.0708(3), F.S.

<sup>6</sup> *See, e.g., Rogers and Wells v. Winston*, 662 So. 2d 1303 (Fla. 4th DCA 1995).

<sup>7</sup> Real Property, Probate and Trust Law Section of The Florida Bar, *White Paper: Proposed amendment of § 731.301 to provide that service of formal notice does not confer in personam jurisdiction over the recipient* (2019) (on file with the Senate Committee on Judiciary).

<sup>8</sup> *Id.*

## **Precious Metals and Collectible Coins as Probate Assets**

Florida law does not specify whether bullion or coins that are not commonly used as currency constitute tangible personal property, and the Section contends there is a lack of consensus among practitioners regarding this issue.<sup>9</sup> Accordingly, it is unclear whether certain directions given in a will would apply to collectible coins and bullion. Moreover, it is unclear whether certain provisions of law apply to these items. For example, s. 732.515, F.S., requires that “items of tangible property” be “specifically disposed of” by the will or by a separate writing. Because it is unclear whether bullion and collectible coins are tangible property, it is unclear whether they must be specifically disposed of pursuant to this statute.

## **Notice of Administration**

Upon being appointed, a personal representative must serve a notice of administration on a surviving spouse, beneficiaries, and other interested parties.<sup>10</sup> This document advises them of important rights and responsibilities relating to the estate.<sup>11</sup>

### ***Notice of Right to Take Elective Share***

Section 733.212(2)(e), F.S., requires that a notice of administration include a statement alerting a surviving spouse that he or she has a specified time to choose the elective share. However, the notice need not alert the spouse that he or she has the option to ask the court to extend this time.<sup>12</sup> Accordingly, the notice of administration might lead a spouse to believe he or she does not have the option to move for the extension.

### ***Notice of Right to Contest Trust Incorporated in a Will***

A 2012 District Court of Appeal opinion appears to indicate that a person who wants to contest a trust that is incorporated by reference into a will must contest the will itself.<sup>13</sup> Nonetheless, the law does not expressly require a personal representative to include this fact in the notice of administration. Moreover, there are different timeframes for contesting wills and trusts, and the timeframes for contesting a will might conclude sooner than those for contesting a trust.<sup>14</sup> Accordingly, a person might have no idea that he or she must contest a will to contest a trust incorporated in the will, and might therefore fail to timely do so.

---

<sup>9</sup> Probate Law and Procedure Committee, Real Property, Probate and Trust Law Section of The Florida Bar, *White Paper: Proposed Addition of § 731.1065, Florida Statutes* (2019) (on file with the Senate Committee on Judiciary).

<sup>10</sup> Section 733.212(1), F.S.

<sup>11</sup> Section 733.212(2), F.S.

<sup>12</sup> See s. 732.2135(2), F.S.

<sup>13</sup> See *Pasquale v. Loving*, 82 So. 3d 1205, 1207 (Fla. 4th DCA 2012) (*stating* “We note, first, that the Pasquales could not challenge the validity of the trust without also contesting the will. The trust was incorporated into the 2005 will.”)

<sup>14</sup> A person may file a will contest within 3 months after receiving a notice of administration. Section 733.212(3), F.S. However, a challenge to a revocable trust within 6 months after receiving notice of the trust, or within the timeframes set forth within ch. 95, F.S., which can equate to 4 years from when a person learned of undue influence or some other basis for invalidating the trust. See s. 736.0604, F.S.; *Flanzer v. Kaplan*, 230 So. 3d 960 (Fla. 2d DCA 2017) (*stating* that the 4-year period begins to run when a beneficiary learns or should have learned of the wrongful conduct). Similarly, an action to challenge an irrevocable trust must be filed within 4 years after the person filing the action learned of or should have learned of the wrongful conduct. *Id.* at 961-62.

### **Actions for Recovery of Property Transferred Inter Vivos**

The Florida Statutes grant a personal representative the right to sue to recover property for the estate.<sup>15</sup> However, several Florida appellate courts have repeatedly indicated that this right is not exclusive, and thus that a beneficiary may also sue to recover property for the estate.<sup>16</sup> Moreover, the personal representative is not an indispensable party to every action to recover property to the estate.<sup>17</sup>

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

#### **Additional Information Required in a Notice of Administration (Section 5)**

Under the bill, just as under current law, the notice of administration must inform the surviving spouse of the standard timeframes within which he or she must choose the elective share or waive his or her right to it. However, under the bill the notice must also advise the surviving spouse that he or she may move the court for an extension of time to choose the elective share.

The bill also requires that the notice of administration state, “under certain circumstances and by failing to contest the will,” an interested person might waive his or her right to contest a *trust* that is incorporated by reference into the will.

#### **Formal Notice in a Probate Proceeding (Section 3)**

The bill provides that formal notice is sufficient notice to a person for a court to adjudicate the person’s interest in the estate property or in the decedent’s protected homestead. However, the bill specifies, this service of formal notice is not sufficient for the court to “acquire personal jurisdiction over [the] person.” So, for instance, a person given (only) formal notice could not be forced into court and made to pay damages in a probate litigation proceeding.<sup>18</sup>

#### **Causes of Action that are Subject to Possession and Control of the Personal Representative (Section 2, Section 7)**

Under the bill, the definition of “property” in the probate code is broadened to include “causes of action of the estate and causes of action the decedent had at the time of death.” Therefore, these

<sup>15</sup> Section 733.607, F.S. For example, a personal representative might sue to recover a car from a person who tricked an incapacitated testator into giving him or her the car *inter vivos*, thus precluding a beneficiary from inheriting the car unless the wrongful transfer is reversed.

<sup>16</sup> See, e.g., *Parker v. Parker*, 185 So. 3d 616 (Fla. 4th DCA 2016); but see *All Children’s Hospital, Inc. v. Owens*, 754 So. 2d 802, 806 (Fla. 2d DCA 2000) (stating that the “personal representative has specific statutory authority to recover estate assets,” and that the court “saw little value” in allowing beneficiaries to pursue their own actions to recover assets that were wrongfully transferred *inter vivos*).

<sup>17</sup> See, e.g., *Id.*; *DeWitt v. Duce*, 408 So. 2d 216 (Fla. 1981).

<sup>18</sup> According to the Real Property, Probate and Trust Law Section, the changes to s. 731.301(2), F.S., are intended to overrule *Rogers and Wells v. Winston*, 662 So. 2d 1303 (Fla. 4th DCA 1995) in which the Fourth DCA found that formal notice to a New York law firm handling Florida probate proceedings gave the trial court jurisdiction over the firm with respect to a payment dispute. See Real Property, Probate and Trust Law Section of The Florida Bar, *White Paper: Proposed amendment of § 731.301 to provide that service of formal notice does not confer in personam jurisdiction over the recipient* (2019) (on file with the Senate Committee on Judiciary). The law firm objected to the trial court’s assertion of jurisdiction because it had not been served with process.

causes of action are subject to the “possession and control” of the personal representative, just as other items of estate property are, such as the decedent’s timepiece or automobile.<sup>19</sup> Thus, it appears that the personal representative would be an indispensable party to these cases.<sup>20</sup>

### **Personal Representative’s Conflict of Interest (Section 6)**

The bill renders voidable more types of sales, transactions, and encumbrances that involve a personal representative’s conflict of interest than current law. Subject to exceptions, current law renders voidable a sale or encumbrance of estate assets to any corporation or trust in which the personal representative has a substantial beneficial interest. The bill also renders voidable any sale or encumbrance to a corporation, trust, *or other entity* in which the personal representative or his or her *spouse, agent, or attorney* has a substantial beneficial or *ownership* interest.

### **Compensation of a Personal Representative or Trustee Who is also an Attorney (Section 8)**

The bill prohibits an attorney from being compensated as a personal representative if the attorney prepared or supervised the execution of a will that nominated the attorney or person related to the attorney as personal representative. However, the prohibition does not apply if the attorney or person nominated is related to the testator. The prohibition also does not apply if the attorney discloses the following information prior to the execution of the will:

- Subject to certain statutory limitations, most family members, regardless of their residence, and any other persons who are residents of Florida, including friends and corporate fiduciaries, are eligible to serve as a personal representative;
- Any person, including an attorney, who serves as a personal representative is entitled to receive reasonable compensation for serving as a personal representative; and
- Compensation payable to the personal representative is in addition to any attorney fees payable to the attorney or the attorney’s firm for legal services rendered to the personal representative.

However, for these disclosures to be sufficient, the testator must execute a written statement acknowledging that the disclosures were made before the will was executed. And the written statement must substantially be in the form set forth in the bill.

The bill provides virtually identical requirements for disclosures and acknowledgements regarding an attorney who serves as a trustee and desires to be compensated both in his or her role as attorney and as a trustee.

---

<sup>19</sup> Section 733.607, F.S. *See also* s. 733.612, F.S. (granting a personal representative broad and specific authority to control estate property).

<sup>20</sup> Assuming the bill makes the personal representative indispensable in “causes of action of the estate and causes of action the decedent had at the time of death,” the bill effectively abrogates *Parker v. Parker*, 185 So. 3d 616 (Fla. 4th DCA 2016) and cases cited by the *Parker* court. In *Parker*, the Court held that the personal representative was *not* indispensable to several causes of action that were held by the decedent at death or that were otherwise causes of action of the estate, such as undue influence and replevin.

### **Precious Metals (Section 1)**

The bill provides that for the purposes of the probate code, precious metals in any tangible form, including bullion or coins kept for purposes such as collecting and not for use as legal tender for payment are tangible personal property. The bill provides that this classification of bullion and coins clarifies current law. Accordingly, the bill states that these clarifying provisions apply to all written instruments, as well as to all probate proceedings except those proceedings in which a disposition of these items has not been finally determined.

The bill takes effect October 1, 2020, 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:**

The bill includes two sections that are expressly intended to apply retroactively. The Florida Supreme Court has developed a two-prong analysis for determining whether a statute may be applied retroactively.<sup>21</sup> First, there must be “clear evidence of legislative intent to apply the statute retrospectively.”<sup>22</sup> If so, then the court moves to the second prong, “which is whether retroactive application is constitutionally permissible.”<sup>23</sup> Retroactive application is unconstitutional if it deprives a person of due process by impairing vested rights or imposing new obligations to previous conduct:

A retrospective provision of a legislative act is not necessarily invalid. It is so only in those cases wherein vested rights are adversely affected or destroyed or when a new obligation or duty is created or imposed, or an additional disability is established, on connection with transactions or considerations previously had or expiated.<sup>24</sup>

<sup>21</sup> See, e.g., *Florida Ins. Guar. Ass’n, Inc. v. Devon Neighborhood Ass’n, Inc.*, 67 So. 3d 187, 194 (Fla. 2011).

<sup>22</sup> *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 3d 494 (Fla. 1999).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 503 (citing *McCord v. Smith*, 43 So. 2d 704, 708-09 (Fla. 1949)).

Accordingly, a “remedial” or “procedural” statute may be applied retroactively, because these statutes do not create or destroy rights or obligations.<sup>25</sup> Instead, a remedial statute “operates to further a remedy or confirm rights that already exist” and a procedural statute provides the “means and methods for the application and enforcement of existing duties and rights.”<sup>26</sup> Finally, the Legislature’s labeling of a law as remedial or procedural does not make it so.<sup>27</sup>

The bill’s provisions that are intended for retroactive application do not appear to be likely to impair vested rights. However, this analysis is inherently fact-specific, and therefore difficult to perform in the abstract. Accordingly, as these provisions are applied to myriad unique circumstances, it is possible that a court may find that one or more of the provisions has destroyed a vested right in a given case, and therefore cannot be applied retroactively in that case.

**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: 731.201, 731.301, 733.212, 733.610, 733.612, 733.617, and 736.0708.

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<sup>25</sup> See *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

<sup>26</sup> *Maronda Homes, Inc. of Fla. v. Lakeview Reserve Homeowners Ass’n., Inc.*, 127 So. 3d 1258, 1272 (Fla. 2013) (citing *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *City of Lakeland v. Catinella*, 129 So. 2d 133, 136 (Fla. 1961)).

<sup>27</sup> See *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

The bill creates section 731.1065 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 Judiciary on November 5, 2019**

The committee substitute removes a provision of the bill that expressly stated that a personal representative has the exclusive right to maintain an action to recover estate property.

- B. **Amendments:**

None.

By the Committee on Judiciary; and Senator Berman

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1 A bill to be entitled  
 2 An act relating to estates and trusts; creating s.  
 3 731.1065, F.S.; specifying that precious metals are  
 4 tangible personal property for the purposes of the  
 5 Florida Probate Code; providing for retroactive  
 6 application; amending s. 731.201, F.S.; revising the  
 7 definition of the term "property"; amending s.  
 8 731.301, F.S.; specifying that formal notice is not  
 9 sufficient to invoke a court's personal jurisdiction  
 10 over a person receiving such formal notice; providing  
 11 applicability; amending s. 733.212, F.S.; revising the  
 12 required contents of a notice of administration;  
 13 amending s. 733.610, F.S.; expanding the list of sales  
 14 or encumbrances that are voidable by interested  
 15 persons under certain circumstances; amending s.  
 16 733.612, F.S.; revising the types of claims and  
 17 proceedings a personal representative may properly  
 18 prosecute or defend; amending s. 733.617, F.S.;  
 19 specifying that certain attorneys and persons are not  
 20 entitled to compensation for serving as a personal  
 21 representative unless the attorney or person is  
 22 related to the testator or unless certain disclosures  
 23 are made before a will is executed; requiring the  
 24 testator to execute a written statement that  
 25 acknowledges that certain disclosures were made;  
 26 providing requirements for the written statement;  
 27 specifying when an attorney is deemed to have prepared  
 28 or supervised the execution of a will; specifying how  
 29 a person may be related to an individual; specifying

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30 when an attorney or a person related to the attorney  
 31 is deemed to have been nominated in a will; providing  
 32 construction; providing applicability; amending s.  
 33 736.0708, F.S.; specifying that certain attorneys and  
 34 persons are not entitled to compensation for serving  
 35 as a trustee unless the attorney or person is related  
 36 to the settlor or unless certain disclosures are made  
 37 before the trust instrument is executed; requiring a  
 38 settlor to execute a written statement that  
 39 acknowledges that certain disclosures were made;  
 40 providing requirements for the written statement;  
 41 specifying when an attorney is deemed to have prepared  
 42 or supervised the execution of a trust instrument;  
 43 specifying how a person may be related to an  
 44 individual; specifying when an attorney or a person  
 45 related to the attorney is deemed appointed in a trust  
 46 instrument; providing construction; providing  
 47 applicability; providing effective dates.

48  
 49 Be It Enacted by the Legislature of the State of Florida:

50  
 51 Section 1. Effective July 1, 2020, section 731.1065,  
 52 Florida Statutes, is created to read:

53 731.1065 Precious metals.—

54 (1) For the purposes of the code, precious metals in any  
 55 tangible form, such as bullion or coins kept and acquired for  
 56 their historical, artistic, collectable, or investment value  
 57 apart from their normal use as legal tender for payment, are  
 58 tangible personal property.

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59 (2) This section is intended to clarify existing law and  
 60 applies retroactively to all written instruments executed  
 61 before, on, or after July 1, 2020, as well as all proceedings  
 62 pending or commenced before, on, or after July 1, 2020, in which  
 63 the disposition of precious metals in any tangible form has not  
 64 been finally determined.

65 Section 2. Subsection (32) of section 731.201, Florida  
 66 Statutes, is amended to read:

67 731.201 General definitions.—Subject to additional  
 68 definitions in subsequent chapters that are applicable to  
 69 specific chapters or parts, and unless the context otherwise  
 70 requires, in this code, in s. 409.9101, and in chapters 736,  
 71 738, 739, and 744, the term:

72 (32) "Property" means both real and personal property or  
 73 any interest in it and anything that may be the subject of  
 74 ownership, including causes of action of the estate and causes  
 75 of action the decedent had at the time of death.

76 Section 3. Effective upon this act becoming a law,  
 77 subsection (2) of section 731.301, Florida Statutes, is amended  
 78 to read:

79 731.301 Notice.—

80 (2) In a probate proceeding, formal notice to a person is  
 81 sufficient notice for the court to exercise its in rem to  
 82 acquire jurisdiction over the person receiving formal notice to  
 83 the extent of the person's interest in the estate property or in  
 84 the decedent's protected homestead. The court does not acquire  
 85 personal jurisdiction over a person by service of formal notice.

86 Section 4. The amendment made by this act to s. 731.301,  
 87 Florida Statutes, applies to all proceedings pending on or

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88 before, or commenced after, the date this act becomes a law.

89 Section 5. Paragraph (e) of subsection (2) of section  
 90 733.212, Florida Statutes, is amended, and paragraph (f) is  
 91 added to that subsection, to read:

92 733.212 Notice of administration; filing of objections.—

93 (2) The notice shall state:

94 (e) That, unless an extension is granted pursuant to s.  
 95 732.2135(2), an election to take an elective share must be filed  
 96 on or before the earlier of the date that is 6 months after the  
 97 date of service of a copy of the notice of administration on the  
 98 surviving spouse, or an attorney in fact or a guardian of the  
 99 property of the surviving spouse, or the date that is 2 years  
 100 after the date of the decedent's death.

101 (f) That, under certain circumstances and by failing to  
 102 contest the will, the recipient of the notice of administration  
 103 may be waiving his or her right to contest the validity of a  
 104 trust or other writing incorporated by reference into a will.

105 Section 6. Effective July 1, 2020, section 733.610, Florida  
 106 Statutes, is amended to read:

107 733.610 Sale, encumbrance, or transaction involving  
 108 conflict of interest.—Any sale or encumbrance to the personal  
 109 representative or the personal representative's spouse, agent,  
 110 or attorney, or any corporation, other entity, or trust in which  
 111 the personal representative, or the personal representative's  
 112 spouse, agent, or attorney, has a substantial beneficial or  
 113 ownership interest, or any transaction that is affected by a  
 114 conflict of interest on the part of the personal representative,  
 115 is voidable by any interested person except one who has  
 116 consented after fair disclosure, unless:

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117 (1) The will or a contract entered into by the decedent  
118 expressly authorized the transaction; or

119 (2) The transaction is approved by the court after notice  
120 to interested persons.

121 Section 7. Subsection (20) of section 733.612, Florida  
122 Statutes, is amended to read:

123 733.612 Transactions authorized for the personal  
124 representative; exceptions.—Except as otherwise provided by the  
125 will or court order, and subject to the priorities stated in s.  
126 733.805, without court order, a personal representative, acting  
127 reasonably for the benefit of the interested persons, may  
128 properly:

129 (20) Prosecute or defend claims or proceedings in any  
130 jurisdiction for the protection of the estate, of the decedent's  
131 property, and of the personal representative.

132 Section 8. Subsection (6) of section 733.617, Florida  
133 Statutes, is amended, and subsection (8) is added to that  
134 section, to read:

135 733.617 Compensation of personal representative.—

136 (6) Except as otherwise provided in this section, if the  
137 personal representative is a member of The Florida Bar and has  
138 rendered legal services in connection with the administration of  
139 the estate, then in addition to a fee as personal  
140 representative, there also shall be allowed a fee for the legal  
141 services rendered.

142 (8) (a) An attorney serving as a personal representative, or  
143 a person related to the attorney, is not entitled to  
144 compensation for serving as a personal representative if the  
145 attorney prepared or supervised the execution of the will that

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146 nominated the attorney or person related to the attorney as  
147 personal representative, unless the attorney or person nominated  
148 is related to the testator, or the attorney makes the following  
149 disclosures to the testator before the will is executed:

150 1. Subject to certain statutory limitations, most family  
151 members, regardless of their residence, and any other persons  
152 who are residents of Florida, including friends and corporate  
153 fiduciaries, are eligible to serve as a personal representative;

154 2. Any person, including an attorney, who serves as a  
155 personal representative is entitled to receive reasonable  
156 compensation for serving as a personal representative; and

157 3. Compensation payable to the personal representative is  
158 in addition to any attorney fees payable to the attorney or the  
159 attorney's firm for legal services rendered to the personal  
160 representative.

161 (b)1. The testator must execute a written statement  
162 acknowledging that the disclosures required under paragraph (a)  
163 were made prior to the execution of the will. The written  
164 statement must be in a separate writing from the will but may be  
165 annexed to the will. The written statement may be executed  
166 before or after the execution of the will in which the attorney  
167 or related person is nominated as the personal representative.

168 2. The written statement must be in substantially the  
169 following form:

170  
171 I, ... (Name) ..., declare that:

172  
173 I have designated my attorney, an attorney employed in the  
174 same law firm as my attorney, or a person related to my attorney

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175 as a nominated personal representative in my will or codicil  
 176 dated ... (insert date)....

177  
 178 Before executing the will or codicil, I was informed that:

179 1. Subject to certain statutory limitations, most family  
 180 members, regardless of their residence, and any other  
 181 individuals who are residents of Florida, including friends and  
 182 corporate fiduciaries, are eligible to serve as a personal  
 183 representative.

184 2. Any person, including an attorney, who serves as a  
 185 personal representative is entitled to receive reasonable  
 186 compensation for serving as a personal representative.

187 3. Compensation payable to the personal representative is  
 188 in addition to any attorney fees payable to the attorney or the  
 189 attorney's firm for legal services rendered to the personal  
 190 representative.

191 ... (Signature)...

192 ... (Testator)...

193 ... (Insert date)...

194  
 195  
 196 (c) For purposes of this subsection:

197 1. An attorney is deemed to have prepared or supervised the  
 198 execution of a will if the preparation or supervision of the  
 199 execution of the will was performed by an employee or attorney  
 200 employed by the same firm as the attorney at the time the will  
 201 was executed.

202 2. A person is "related" to an individual if, at the time  
 203 the attorney prepared or supervised the execution of the will,

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204 the person is:

205 a. A spouse of the individual;

206 b. A lineal ascendant or descendant of the individual;

207 c. A sibling of the individual;

208 d. A relative of the individual or of the individual's  
 209 spouse with whom the attorney maintains a close, familial  
 210 relationship;

211 e. A spouse of a person described in sub-subparagraphs b.-  
 212 d.;

213 f. A person who cohabitates with the individual; or

214 g. An employee or attorney employed by the same firm as the  
 215 attorney at the time the will is executed.

216 3. An attorney or a person related to the attorney is  
 217 deemed to have been nominated in the will when the will  
 218 nominates the attorney or the person related to the attorney as  
 219 personal representative, co-personal representative, successor,  
 220 or alternate personal representative in the event another person  
 221 nominated is unable to or unwilling to serve, or provides the  
 222 attorney or any person related to the attorney with the power to  
 223 nominate the personal representative and the attorney or person  
 224 related to the attorney was nominated using that power.

225 (d) Other than compensation payable to the personal  
 226 representative, this subsection does not limit any rights or  
 227 remedies that any interested person may have at law or in  
 228 equity.

229 (e) The failure to obtain an acknowledgment from the  
 230 testator under this subsection does not disqualify a personal  
 231 representative from serving and does not affect the validity of  
 232 a will.

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233 (f) This subsection applies to all nominations made  
 234 pursuant to a will:  
 235 1. Executed by a resident of this state on or after October  
 236 1, 2020; or  
 237 2. Republished by a resident of this state on or after  
 238 October 1, 2020, if the republished will nominates the attorney  
 239 who prepared or supervised the execution of the instrument that  
 240 republished the will, or a person related to such attorney, as  
 241 personal representative.  
 242 Section 9. Subsection (4) is added to section 736.0708,  
 243 Florida Statutes, to read:  
 244 736.0708 Compensation of trustee.—  
 245 (4) (a) An attorney serving as a trustee, or a person  
 246 related to such attorney, is not entitled to compensation for  
 247 servng as a trustee if the attorney prepared or supervised the  
 248 execution of the trust instrument that appointed the attorney or  
 249 person related to the attorney as trustee, unless the attorney  
 250 or person appointed is related to the settlor or the attorney  
 251 makes the following disclosures to the settlor before the trust  
 252 instrument is executed:  
 253 1. Unless specifically disqualified by the terms of the  
 254 trust instrument, any person, regardless of state of residence  
 255 and including a family member, friend, or corporate fiduciary,  
 256 is eligible to serve as a trustee;  
 257 2. Any person, including an attorney, who serves as a  
 258 trustee is entitled to receive reasonable compensation for  
 259 servng as trustee; and  
 260 3. Compensation payable to the trustee is in addition to  
 261 any attorney fees payable to the attorney or the attorney's firm

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262 for legal services rendered to the trustee.  
 263 (b)1. The settlor must execute a written statement  
 264 acknowledging that the disclosures required under paragraph (a)  
 265 were made prior to the execution of the trust instrument. The  
 266 written statement must be in a separate writing from the trust  
 267 instrument but may be annexed to the trust instrument. The  
 268 written statement may be executed before or after the execution  
 269 of the trust in which the attorney or related person is  
 270 appointed as the trustee.  
 271 2. The written statement must be in substantially the  
 272 following form:  
 273  
 274 I, ... (Name) ..., declare that:  
 275  
 276 I have designated my attorney, an attorney employed in the  
 277 same law firm as my attorney, or a person related to my attorney  
 278 as a trustee in my trust instrument dated ... (insert date) ...  
 279  
 280 Before executing the trust, I was informed that:  
 281 1. Unless specifically disqualified by the terms of the  
 282 trust instrument, any person, regardless of state of residence  
 283 and including family members, friends, and corporate  
 284 fiduciaries, is eligible to serve as a trustee.  
 285 2. Any person, including an attorney, who serves as a  
 286 trustee is entitled to receive reasonable compensation for  
 287 servng as trustee.  
 288 3. Compensation payable to the trustee is in addition to  
 289 any attorney fees payable to the attorney or the attorney's firm  
 290 for legal services rendered to the trustee.

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291  
 292 ...(Signature)...  
 293 ...(Settlor)...  
 294 ...(Insert Date)...

295  
 296 (c) For purposes of this subsection:

297 1. An attorney is deemed to have prepared, or supervised  
 298 the execution of, a trust instrument if the preparation, or  
 299 supervision of the execution, of the trust instrument was  
 300 performed by an employee or attorney employed by the same firm  
 301 as the attorney at the time the trust instrument was executed.

302 2. A person is "related" to an individual if, at the time  
 303 the attorney prepared or supervised the execution of the trust  
 304 instrument, the person is:

305 a. A spouse of the individual;

306 b. A lineal ascendant or descendant of the individual;

307 c. A sibling of the individual;

308 d. A relative of the individual or of the individual's  
 309 spouse with whom the attorney maintains a close, familial  
 310 relationship;

311 e. A spouse of a person described in sub-subparagraphs b.-

312 d.;

313 f. A person who cohabitates with the individual; or

314 g. An employee or attorney employed by the same firm as the  
 315 attorney at the time the trust instrument is executed.

316 3. An attorney or a person related to the attorney is  
 317 deemed appointed in the trust instrument when the trust  
 318 instrument appoints the attorney or the person related to the  
 319 attorney as trustee, co-trustee, successor, or alternate trustee

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320 in the event another person nominated is unable to or unwilling  
 321 to serve, or provides the attorney or any person related to the  
 322 attorney with the power to appoint the trustee and the attorney  
 323 or person related to the attorney was appointed using that  
 324 power.

325 (d) Other than compensation payable to the trustee, this  
 326 subsection does not limit any rights or remedies that any  
 327 interested person may have at law or equity.

328 (e) The failure to obtain an acknowledgment from the  
 329 settlor under this subsection does not disqualify a trustee from  
 330 servicing and does not affect the validity of a trust instrument.

331 (f) This subsection applies to all appointments made  
 332 pursuant to a trust agreement:

333 1. Executed by a resident of this state on or after October  
 334 1, 2020; or

335 2. Amended by a resident of this state on or after October  
 336 1, 2020, if the trust agreement nominates the attorney who  
 337 prepared or supervised the execution of the amendment or a  
 338 person related to such attorney as trustee.

339 Section 10. Except as otherwise expressly provided in this  
 340 act and except for this section, which shall take effect upon  
 341 this act becoming a law, this act shall take effect October 1,  
 342 2020.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** December 16, 2019

---

I respectfully request that **Senate Bill #358**, relating to Decedents' Property, be placed on the:

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

*Lori Berman*

---

Senator Lori Berman

cc: Senator Audrey Gibson, Vice Chair  
John Phelps, Staff Director  
Cyndi Futch, Committee Administrative Assistant

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/20

*Meeting Date*

358

*Bill Number (if applicable)*

Topic \_\_\_\_\_

*Amendment Barcode (if applicable)*

Name Martha Edenfield

Job Title \_\_\_\_\_

Address 215 So. Monroe Street #815

Phone 850-999-4100

*Street*

Tallahassee

FL

32301

Email medenfield@deanmead.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

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

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 368

INTRODUCER: Infrastructure and Security Committee and Senator Rouson

SUBJECT: Tampa Bay Area Regional Transit Authority

DATE: February 24, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<b>Fav/CS</b>
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<b>Favorable</b>
3.	<u>Proctor</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 368:

- Renames the Tampa Bay Area Regional Transit Authority (TBARTA) Metropolitan Planning Organization (MPO) Chairs Coordinating Committee (CCC) as the CCC;
- Authorizes mayors who are members of the board to appoint a designee to attend a board meeting to act in their place with full voting rights on all issues;
- Requires the mayor's designee to be an elected official of the governing body of the mayor's municipality and be voted on by such body;
- Provides that a simple majority of board members constitutes a quorum and a simple majority of the voting members present will be necessary for any action to be taken by the board;
- Deletes the requirement that TBARTA present the original regional transit development plan and updates to the governing bodies of the counties within the designated region;
- Deletes the requirement that TBARTA coordinate plans and projects with the TBARTA MPO CCC and participate in the regional MPO planning process to ensure regional comprehension of TBARTA's mission, goals, and objectives; and
- Deletes the requirement that TBARTA provide administrative support and direction to the CCC.

The bill has an effective date of July 1, 2020.

## II. Present Situation:

### Tampa Bay Area Regional Transit Authority

Part V of ch. 343, F.S., creates the TBARTA. The TBARTA covers Hernando, Hillsborough, Manatee, Pasco, and Pinellas counties and any other contiguous county that is a party to an agreement of participation.<sup>1</sup> The TBARTA's express purposes are to:

- Plan, implement, and operate mobility improvements and expansions of multimodal transportation options for passengers and freight throughout the designated region;
- Produce a regional transit development plan, integrating the transit development plans of participant counties, to include a prioritization of regionally significant transit projects and facilities; and
- Serve with the consent of the Governor or designee, as the recipient of federal funds supporting an intercounty project or an intracounty capital project that represents a phase of an intercounty project that exists in a single county within the designated region.<sup>2</sup>

The membership of the TBARTA's 13-member governing board (the board) consists of:

- One county commissioner from each of the boards of county commissioners of Hernando, Hillsborough, Manatee, Pasco, and Pinellas counties. Members are appointed to serve 2-year terms with not more than three consecutive terms being served by any person;
- The Mayors of the two largest municipalities within the service area of each of the Pinellas Suncoast Transit Authority and the Hillsborough Area Regional Transit Authority, or their legislatively created successor agencies;
- Four members of the regional business community appointed by the Governor, each of whom must reside in one of the counties governed by the authority, and none of whom may be an elected official. They serve a 2-year term with not more than three consecutive terms being served by any person; and
- Two members appointed from the governing boards of the Pinellas Suncoast Transit Authority and the Hillsborough Area Regional Transit Authority, or their legislatively created successor agencies. Each member appointed will serve a 2-year term with not more than three consecutive terms being served by any person.<sup>3</sup>

Seven members of the board are required to constitute a quorum, and the vote of seven members is necessary for any action to be taken by the TBARTA. The TBARTA may meet upon the constitution of a quorum, and a vacancy does not impair the right of a quorum of the board to exercise all rights and the ability to perform all duties of the TBARTA.<sup>4</sup>

Beginning July 1, 2017, the board was required to evaluate the abolishment, continuance, modification, or establishment of the following committees:<sup>5</sup>

- Planning committee;
- Policy committee;

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<sup>1</sup> Section 343.91(1)(a), F.S.

<sup>2</sup> Section 343.922(1), F.S.

<sup>3</sup> Section 343.92(2)(b), F.S.

<sup>4</sup> Section 343.92(8), F.S.

<sup>5</sup> Section 343.92(9), F.S.

- Finance committee;
- Citizens advisory committee;
- TBARTA MPO CCC;
- Transit management committee; and
- Technical advisory committee.

After the board completed its evaluation, it was required to submit its recommendations for abolishment, continuance, modification, or establishment of the committees to the President of the Senate and the Speaker of the House of Representatives before the beginning of the 2018 Regular Session.<sup>6</sup>

The TBARTA MPO CCC was created within the TBARTA, composed of the MPO's serving Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota counties. The TBARTA is required to provide administrative support and direction to the CCC. The CCC must, at a minimum:

- Coordinate transportation projects deemed to be regionally significant by the committee;
- Review the impact of regionally significant land use decisions on the region;
- Review all proposed regionally significant transportation projects in the respective transportation improvement programs which affect more than one of the MPO's represented on the committee; and
- Institute a conflict resolution process to address any conflict that may arise in the planning and programming of such regionally significant projects.<sup>7</sup>

The CCC conducts two meetings a year, one in the summer and one in the fall. Every year, the CCC receives public comment and adopts the West Central Florida Regional Roadway Network, Transportation Regional Incentive Program Priority Projects, and Regional Multi-Use Trail Priority Projects. The CCC transmits these priorities to the District 1 and 7 offices of the Florida Department of Transportation. The CCC also makes a yearly recommendation to the TBARTA Board for the TBARTA Regional Priority Projects.<sup>8</sup>

### III. Effect of Proposed Changes:

The bill amends s. 339.175(6), F.S., to:

- Modify the organization of the CCC so it is no longer created within the TBARTA;
- Modify the name TBARTA MPO CCC to only the CCC, with the composition of the CCC remaining the same; and
- Remove the requirement that the TBARTA provide administrative support and direction to the CCC.

The bill amends s. 343.92(2)(b), F.S., to provide that a mayor may appoint a designee to attend a TBARTA meeting to act in his or her place with full voting rights on all issues. The designee

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

<sup>7</sup> Section 339.175(6)(i), F.S.

<sup>8</sup> Tampa Bay Area Regional Transit Authority, *MPOs Chairs Coordinating Committee*, available at <https://tbarta.com/en/boards-committees/mpo-chairs-coordinating-committee/> (last visited Jan. 27, 2020).

must be an elected member of the municipality's city council and approved as the mayor's designated alternate by the municipality's city council.

The bill amends s. 343.92(8), F.S., to allow a simple majority of the TBARTA board to constitute a quorum and a simple majority of the voting members to be present for the board to take any action.

The bill amends s. 343.92(9), F.S., to remove language, which no longer serves a purpose with the passage of the 2018 Regular Legislative Session, that required the TBARTA to evaluate the abolishment, continuance, modification, or establishment of select TBARTA committees and submit those recommendations to the President of the Senate and the Speaker of the House of Representatives before the beginning of the 2018 Regular Session.

The bill amends s. 343.922(3), F.S., to remove the requirements that TBARTA:

- Present the original regional transit development plan and updates to the governing bodies of the counties within the designated region;
- Coordinate plans and projects with the TBARTA MPO Chairs Coordinating Committee and participate in the regional MPO planning process to ensure regional comprehension of TBARTA's mission, goals, and objectives; and
- Provide administrative support and direction to the TBARTA MPO Chairs Coordinating Committee.

The bill has an effective date of July 1, 2020.

#### **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:**

TBARTA may realize cost savings and improvement in efficiency from not having to:

- Cancel a noticed meeting due to a lack of quorum;
- Present the original regional transit development plan and updates to the governing bodies of the counties within the designated region;
- Coordinate plans and projects with the TBARTA MPO Chairs Coordinating Committee and participate in the regional MPO planning process to ensure regional comprehension of TBARTA's mission, goals, and objectives; and
- Provide administrative support and direction to the TBARTA MPO Chairs Coordinating Committee.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends the following sections of the Florida Statutes: 339.175, 343.92, and 343.922

**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 Infrastructure and Security on January 27, 2020:**

- Renames the TBARTA MPO CCC as the CCC;
- Authorizes mayors who are members of the board to appoint a designee to attend a board meeting to act in their place with full voting rights on all issues;
- Requires the mayor's designee to be an elected official of the governing body of the mayor's municipality and be voted on by such body;
- Provide that a simple majority of board members constitutes a quorum and a simple majority of the voting members present will be necessary for any action to be taken by the board;

- Deletes an obsolete provision related to the TBARTA committees;
- Deletes requirement that TBARTA present the original regional transit development plan and updates to the governing bodies of the counties within the designated region;
- Deletes requirement that TBARTA coordinate plans and projects with the TBARTA MPO Chairs Coordinating Committee and participate in the regional MPO planning process to ensure regional comprehension of TBARTA's mission, goals, and objectives; and
- Deletes requirement that TBARTA provide administrative support and direction to the TBARTA MPO Chairs Coordinating Committee.

B. Amendments:

None.

By the Committee on Infrastructure and Security; and Senator Rouson

596-02646-20

2020368c1

1 A bill to be entitled  
 2 An act relating to the Tampa Bay Area Regional Transit  
 3 Authority; amending s. 339.175, F.S.; renaming the  
 4 Tampa Bay Area Regional Transit Authority Metropolitan  
 5 Planning Organization Chairs Coordinating Committee as  
 6 the Chairs Coordinating Committee; deleting a  
 7 requirement that the Tampa Bay Area Regional Transit  
 8 Authority provide the committee with administrative  
 9 support and direction; amending s. 343.92, F.S.;  
 10 providing that a mayor's designated alternate may be a  
 11 member of the governing board of the authority;  
 12 requiring that the alternate be an elected member of  
 13 the city council of the mayor's municipality and be  
 14 approved by the municipality's city council; requiring  
 15 a mayor's designated alternate to attend meetings  
 16 under certain circumstances, in which case the  
 17 alternate has full voting rights; providing that a  
 18 simple majority of board members constitutes a quorum  
 19 and that a simple majority of those members present is  
 20 necessary for any action to be taken; deleting  
 21 obsolete language; amending s. 343.922, F.S.; deleting  
 22 a provision requiring that the authority present the  
 23 original regional transit development plan and updates  
 24 to specified entities; deleting a provision requiring  
 25 that the authority coordinate plans and projects with  
 26 the TBARTA Metropolitan Planning Organization Chairs  
 27 Coordinating Committee and participate in the regional  
 28 M.P.O. planning process to ensure regional  
 29 comprehension of the authority's mission, goals, and

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

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30 objectives; deleting a provision requiring that the  
 31 authority provide administrative support and direction  
 32 to the TBARTA Metropolitan Planning Organization  
 33 Chairs Coordinating Committee; providing an effective  
 34 date.  
 35

36 Be It Enacted by the Legislature of the State of Florida:  
 37

38 Section 1. Paragraph (i) of subsection (6) of section  
 39 339.175, Florida Statutes, is amended to read  
 40 339.175 Metropolitan planning organization.-  
 41 (6) POWERS, DUTIES, AND RESPONSIBILITIES.—The powers,  
 42 privileges, and authority of an M.P.O. are those specified in  
 43 this section or incorporated in an interlocal agreement  
 44 authorized under s. 163.01. Each M.P.O. shall perform all acts  
 45 required by federal or state laws or rules, now and subsequently  
 46 applicable, which are necessary to qualify for federal aid. It  
 47 is the intent of this section that each M.P.O. shall be involved  
 48 in the planning and programming of transportation facilities,  
 49 including, but not limited to, airports, intercity and high-  
 50 speed rail lines, seaports, and intermodal facilities, to the  
 51 extent permitted by state or federal law.

52 (i) There is created the ~~Tampa Bay Area Regional Transit~~  
 53 ~~Authority Metropolitan Planning Organization~~ Chairs Coordinating  
 54 ~~Committee is created within the Tampa Bay Area Regional Transit~~  
 55 ~~Authority~~, composed of the M.P.O.'s serving Citrus, Hernando,  
 56 Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota  
 57 Counties. ~~The authority shall provide administrative support and~~  
 58 ~~direction to the committee.~~ The committee must, at a minimum:

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

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59 1. Coordinate transportation projects deemed to be  
60 regionally significant by the committee.

61 2. Review the impact of regionally significant land use  
62 decisions on the region.

63 3. Review all proposed regionally significant  
64 transportation projects in the respective transportation  
65 improvement programs which affect more than one of the M.P.O.'s  
66 represented on the committee.

67 4. Institute a conflict resolution process to address any  
68 conflict that may arise in the planning and programming of such  
69 regionally significant projects.

70 Section 2. Paragraph (b) of subsection (2) and subsections  
71 (8) and (9) of section 343.92, Florida Statutes, are amended to  
72 read

73 343.92 Tampa Bay Area Regional Transit Authority.—

74 (2) The governing board of the authority shall consist of  
75 13 voting members appointed no later than 45 days after the  
76 creation of the authority.

77 (b) The 13 voting members of the board shall be as follows:

78 1. The county commissions of Hernando, Hillsborough,  
79 Manatee, Pasco, and Pinellas Counties shall each appoint one  
80 county commissioner to the board. Members appointed under this  
81 subparagraph shall serve 2-year terms with not more than three  
82 consecutive terms being served by any person. If a member under  
83 this subparagraph leaves elected office, a vacancy exists on the  
84 board to be filled as provided in this subparagraph within 90  
85 days.

86 2.a. Two members of the board shall be the mayor, or the  
87 mayor's designated alternate, of the largest municipality within

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88 the service area of each of the following independent transit  
89 agencies or their legislatively created successor agencies:  
90 Pinellas Suncoast Transit Authority and Hillsborough Area  
91 Regional Transit Authority. The largest municipality is that  
92 municipality with the largest population as determined by the  
93 most recent United States Decennial Census.

94 b. The mayor's designated alternate must be an elected  
95 member of the municipality's city council and approved as the  
96 mayor's designated alternate by the municipality's city council.  
97 In the event the mayor is unable to attend a meeting, the  
98 mayor's designated alternate shall attend the meeting on the  
99 mayor's behalf and has the full right to vote.

100 3. The following independent transit agencies or their  
101 legislatively created successor agencies shall each appoint from  
102 the membership of their governing bodies one member to the  
103 board: Pinellas Suncoast Transit Authority and Hillsborough Area  
104 Regional Transit Authority. Each member appointed under this  
105 subparagraph shall serve a 2-year term with not more than three  
106 consecutive terms being served by any person. If a member no  
107 longer meets the transit authority's criteria for appointment, a  
108 vacancy exists on the board, which must be filled as provided in  
109 this subparagraph within 90 days.

110 4. The Governor shall appoint to the board four members  
111 from the regional business community, each of whom must reside  
112 in one of the counties governed by the authority and may not be  
113 an elected official. Of the members initially appointed under  
114 this subparagraph, one shall serve a 1-year term, two shall  
115 serve 2-year terms, and one shall serve a term as the initial  
116 chair as provided in subsection (5). Thereafter, a member

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117 appointed under this subparagraph shall serve a 2-year term with  
 118 not more than three consecutive terms being served by any  
 119 person.

120

121 Appointments may be staggered to avoid mass turnover at the end  
 122 of any 2-year or 4-year period. A vacancy during a term shall be  
 123 filled within 90 days in the same manner as the original  
 124 appointment for the remainder of the unexpired term.

125 (8) A simple majority ~~Seven members~~ of the board shall  
 126 constitute a quorum, and a simple majority of the voting members  
 127 present shall be necessary for any action to be taken by the  
 128 board ~~the vote of seven members is necessary for any action to~~  
 129 ~~be taken by the authority.~~ The authority may meet upon the  
 130 constitution of a quorum. A vacancy does not impair the right of  
 131 a quorum of the board to exercise all rights and the ability to  
 132 perform all duties of the authority.

133 ~~(9) Beginning July 1, 2017, the board must evaluate the~~  
 134 ~~abolishment, continuance, modification, or establishment of the~~  
 135 ~~following committees:~~

136 ~~(a) Planning committee.~~

137 ~~(b) Policy committee.~~

138 ~~(c) Finance committee.~~

139 ~~(d) Citizens advisory committee.~~

140 ~~(e) Tampa Bay Area Regional Transit Authority Metropolitan~~  
 141 ~~Planning Organization Chairs Coordinating Committee.~~

142 ~~(f) Transit management committee.~~

143 ~~(g) Technical advisory committee.~~

144

145 ~~The board must submit its recommendations for abolishment,~~

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146 ~~continuance, modification, or establishment of the committees to~~  
 147 ~~the President of the Senate and the Speaker of the House of~~  
 148 ~~Representatives before the beginning of the 2018 Regular~~  
 149 ~~Session.~~

150 Section 3. Paragraphs (e), (f), and (g) of subsection (3)  
 151 of section 343.922, Florida Statutes, are amended to read  
 152 343.922 Powers and duties.—

153 (3)

154 ~~(e) The authority shall present the original regional~~  
 155 ~~transit development plan and updates to the governing bodies of~~  
 156 ~~the counties within the designated region, to the TBARTA~~  
 157 ~~Metropolitan Planning Organization Chairs Coordinating~~  
 158 ~~Committee, and to the legislative delegation members~~  
 159 ~~representing those counties within 90 days after adoption.~~

160 ~~(f) The authority shall coordinate plans and projects with~~  
 161 ~~the TBARTA Metropolitan Planning Organization Chairs~~  
 162 ~~Coordinating Committee, to the extent practicable, and~~  
 163 ~~participate in the regional M.P.O. planning process to ensure~~  
 164 ~~regional comprehension of the authority's mission, goals, and~~  
 165 ~~objectives.~~

166 ~~(g) The authority shall provide administrative support and~~  
 167 ~~direction to the TBARTA Metropolitan Planning Organization~~  
 168 ~~Chairs Coordinating Committee as provided in s. 339.175(6)(i).~~

169 Section 4. This act shall take effect July 1, 2020.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 11, 2020

---

I respectfully request that **Senate Bill #0368**, relating to Tampa Bay Regional Transit Authority, be placed on the:

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

A handwritten signature in cursive script that reads "Darryl Ervin Rouson".

---

Senator Darryl Ervin Rouson  
Florida Senate, District 19

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-26-20

Meeting Date

1368

Bill Number (if applicable)

Topic TBARTA

Amendment Barcode (if applicable)

Name Kaitlyn Bailey

Job Title RSA Consulting

Address 113 E College Ave

Phone 850 585 0523

Tallahassee FL 32304

Email

Speaking: [ ] For [ ] Against [ ] Information

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

Representing TBARTA

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [x] Yes [ ] No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 380

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Baxley

SUBJECT: Disposition of Personal Property

DATE: February 24, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Palecki</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Palecki</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 380 authorizes the summary distribution of a decedent's bank account or other depository account of \$1,000 or less and provides for the informal disposition of small intestate estates.

Regarding depository accounts and certificates of deposit, the bill authorizes a financial institution to pay the family member of a decedent, without any court proceeding, order, or judgment authorizing the payment, the funds on deposit in all qualified accounts if the total amount of these funds does not exceed \$1,000. The financial institution may make the payment not earlier than 6 months after the date of the decedent's death.

The family member seeking payment of the funds from the qualified accounts must provide the financial institution with a certified copy of the decedent's death certificate and a sworn affidavit. The affidavit must state that the affiant is a family member who is entitled to the funds, that the he or she is not aware of a will or a probate proceeding for the accountholder's estate, and that he or she expressly accepts liability for the disbursement of the funds. The bill provides criminal penalties for making a false statement in the affidavit, classifying such action as theft. Accordingly, the bill releases a financial institution from liability upon its disbursement of funds to an affiant and expressly provides that the institution is not required to verify the content of the affidavit.

Regarding the distribution of small intestate estates, meaning estates consisting of exempt property and personal property valued at less than \$10,000, the bill authorizes the distribution of certain of these estates without probate administration or other “formal proceedings.” To acquire the property of these estates, an heir of a person who has been deceased for at least one year must file an affidavit with the court, which in turn provides the heir with a letter authorizing anyone holding the decedent’s property to release it to the heir. The required content of the affidavit is designed to demonstrate to the court that the rights of any creditors and other heirs are and will be protected.

## **II. Present Situation:**

### **Regulation of Financial Institutions**

Florida law defines the term “financial institution” broadly; the term includes “state and federal savings or thrift associations, banks, savings banks, trust companies, international bank agencies, international banking corporations, international branches, international representative offices, international administrative offices, international trust entities, international trust company representative offices, qualified limited service affiliates, credit unions, agreement corporations operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. and Edge Act corporations organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.”<sup>1</sup>

However, not all financial institutions are expressly authorized to accept or hold deposits or certificates of deposits.<sup>2</sup>

### ***Dual Regulatory System***

Banks and credit unions may be either state or federally chartered. The Florida Office of Financial Regulation (OFR) is responsible for chartering and supervising state financial institutions, including state-chartered banks and state-chartered credit unions.<sup>3</sup>

National banks are chartered pursuant to the National Bank Act and supervised by the Office of the Comptroller of the Currency (OCC).<sup>4</sup> National banks are required to be members of the Federal Reserve System; state banks may apply for membership.<sup>5</sup> The Federal Reserve is the primary federal regulator of state member banks, and also serves as the primary regulator of bank holding companies and financial holding companies.<sup>6</sup>

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<sup>1</sup> Section 655.005(1)(i), F.S.

<sup>2</sup> For instance, holding a deposit does not fall within the enumerated permissible activities of an international representative office, an international administrative office, an international trust company representative office, or a qualified limited service affiliate. *See* ss. 663.062, 663.063, 663.409, and 663.531, F.S.

<sup>3</sup> Section 655.012(1)(a), F.S.

<sup>4</sup> 12 U.S.C. s. 481.

<sup>5</sup> 12 U.S.C. s. 208.3 and 222.

<sup>6</sup> 12 U.S.C. s. 248.

Federally-chartered credit unions are chartered and supervised by the National Credit Union Administration (NCUA).<sup>7</sup> Both state- and federally-chartered credit unions must obtain insurance of their accounts and are subject to examination by the NCUA.<sup>8</sup>

### ***Transfer of Deposited Funds Incident to Death***

When an accountholder dies, his or her stake in an account under more than one name will vest automatically in another surviving accountholder.<sup>9</sup> However, if all named accountholders die, the account will generally pass according to any “pay-on-death designation” on the account.<sup>10</sup> Under this arrangement, upon the death of all accountholders, the account becomes the property of any designated beneficiary or beneficiaries.<sup>11</sup> The institution may pay the balance of the account to the beneficiaries named on the account upon the presentation to the institution of proof of the death of the accountholder(s).<sup>12</sup>

An institution may also, upon receiving the accountholder’s death certificate, pass the funds of a “pay-on-death” account to the heirs of an accountholder if they survived all other accountholders and beneficiaries.<sup>13</sup>

### **Florida Probate Law**

The Florida Probate Code provides the statutory mechanism for the transfer of property from a decedent to persons or entities named in a decedent’s will (often called beneficiaries) or to the decedent’s heirs, if there is no will. The property transferred via the probate process is called the “estate.”<sup>14</sup> Assets subject to probate are those that were owned in the decedent’s sole name at death or that were owned by the decedent and one or more co-owners but lacked a provision for automatic succession of ownership at death.<sup>15</sup> Accordingly, they generally do not include pay-on-death accounts and accounts under multiple names, which, as discussed above, pass automatically upon an accountholder’s death.

If the decedent had a will, the property is transferred as directed by the will. If a person dies without a will, the person is considered to have died “intestate” and the person’s property is transferred to heirs according to the laws of intestate succession.<sup>16</sup> Section 732.102, F.S., provides that a surviving spouse takes the entire intestate estate if there is no surviving descendant of the decedent. If the decedent is survived by one or more descendants, all of whom are also descendants of the surviving spouse, and the surviving spouse has no other descendants, the surviving spouse takes the entire intestate estate.<sup>17</sup> If there are one or more surviving descendants of the decedent who are not lineal descendants of the surviving spouse, the

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<sup>7</sup> See 12 U.S.C. s. 1751, et. seq.

<sup>8</sup> Section 657.033, F.S.; 12 U.S.C. s. 1784.

<sup>9</sup> Section 655.79, F.S.

<sup>10</sup> Section 655.82.

<sup>11</sup> Section 655.82(3), F.S.

<sup>12</sup> Section 655.82(6), F.S.

<sup>13</sup> Section 655.82(6)(c), F.S.

<sup>14</sup> Section 731.201(14), F.S.

<sup>15</sup> The Florida Bar, Consumer Pamphlet: *Probate in Florida*, <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited Feb. 12, 2020).

<sup>16</sup> Section 732.101(1), F.S.

<sup>17</sup> See s. 732.102(2), F.S.

surviving spouse takes one-half of the intestate estate.<sup>18</sup> If there are one or more surviving descendants of the decedent, all of whom are also descendants of the surviving spouse, and the surviving spouse has one or more descendants who are not descendants of the decedent, the surviving spouse takes one-half of the intestate estate.<sup>19</sup> The part of the intestate estate not passing to the surviving spouse, or the entire intestate estate if there is no surviving spouse, transfers to the descendants of the decedent.<sup>20</sup> If the decedent has no descendants, the decedent's parents take the intestate estate.<sup>21</sup>

In order for the decedent's estate to be transferred to heirs or to the beneficiaries of the will, a petition for administration must be filed with the circuit court.<sup>22</sup> The personal representative, a person designated by the will or the circuit court to serve in that role, must provide a notice of administration to various persons, such as family members and beneficiaries, and other entities.<sup>23</sup> Those persons must act to contest the will or take other actions within statutory time limits.<sup>24</sup> The personal representative must search for and provide notice, by publication in a newspaper, to creditors of the decedent.<sup>25</sup> Creditors must generally make claims against the estate within 3 months of notice.<sup>26</sup> In order for personal representatives to claim monies from bank accounts for the estate, the court must issue letters of administration granting the personal representative the authority to act on behalf of the estate. The letters give the personal representative the power to gather assets, pay creditors, and pay the heirs or beneficiaries. Even a simple probate estate can take 5 or 6 months to administer and close.<sup>27</sup>

### ***Summary Probate Administration***

Summary administration is an alternative to the formal administration process and is available only if the decedent has been dead for more than 2 years or if the value of the estate subject to administration in Florida (less the value of property which is exempt from the claims of creditors<sup>28</sup>) is less than \$75,000.<sup>29</sup> However, summary administration is not available if a decedent's will specifically directs formal administration.<sup>30</sup>

A petition for summary administration may be filed by any beneficiary or person nominated as personal representative in the decedent's will.<sup>31</sup> However, any other beneficiary must be served with formal notice of the petition.<sup>32</sup>

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<sup>18</sup> See s. 732.102(3), F.S.

<sup>19</sup> See s. 732.102(4), F.S.

<sup>20</sup> See s. 732.103(1), F.S.

<sup>21</sup> See s. 732.103(2), F.S.

<sup>22</sup> See s. 733.202, F.S.

<sup>23</sup> See s. 733.212, F.S.

<sup>24</sup> See s. 733.212, F.S.

<sup>25</sup> See s. 733.2121, F.S.

<sup>26</sup> See s. 733.702, F.S.

<sup>27</sup> See <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited February 7, 2020).

<sup>28</sup> For example, homestead property that is protected from creditors' claims by Art. X, s. 4, Fla. Const.

<sup>29</sup> Section 735.201(2), F.S.

<sup>30</sup> Section 735.201(1), F.S.

<sup>31</sup> Section 735.203(1), F.S.

<sup>32</sup> *Id.*

If the decedent passed away more than 2 years before the filing of the petition for summary administration, creditors' claims do not need to be addressed in the summary administration proceeding because Florida's non-claim statute effectively bars any creditors' claims that are not brought within 2 years of the decedent's death.<sup>33</sup> If the decedent passed away less than 2 years before the filing of the petition for summary judgment, the petitioner is required to make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors, serve a copy of the petition on those creditors, and make provision for payment for those creditors to the extent that assets are available.<sup>34</sup> As for those creditors who are not known or reasonably ascertainable, if proof of publication of a specified notice to creditors has been filed with the court, all claims and demands of such creditors are forever barred unless their claims are filed within 3 months after the first publication of the notice.<sup>35</sup>

Those who receive a distribution of estate assets generally remain liable for claims against the decedent for 2 years after the date of death.<sup>36</sup> The following parties are entitled to receive reasonable attorney's fees and costs if they prevail in an action to enforce their claim:

- Any known or reasonably ascertainable creditor who did not receive notice and for whom provision for payment was not made.<sup>37</sup>
- Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in the order of summary administration and distribution.<sup>38</sup>

### ***Disposition of Decedent Property Without Administration***

Disposition of personal property without administration is another alternative to the formal administration process and available if the decedent's probate estate consists only of the following:<sup>39</sup>

- Personal property classified as exempt under the provisions of s. 732.402, F.S., such as household furnishings up to a net value of \$20,000 and two vehicles;
- Personal property exempt from the claims of creditors under the Florida Constitution, such as personal property valued at \$1,000 or less;<sup>40</sup> and
- Non-exempt personal property valued at less than the sum of the amount of preferred funeral expenses and the amount of reasonable and necessary medical and hospital expenses incurred in the last 60 days of the decedent's final illness.

Any interested party may file such an informal application by affidavit, letter, or otherwise with the court.<sup>41</sup> If the court is satisfied that the decedent's assets meet the criteria for this abbreviated process, the court may, by letter or other writing under the seal of the court, authorize the payment, transfer, or disposition of the personal property, tangible or intangible, belonging to the decedent to those persons entitled.<sup>42</sup> Any person, firm, or corporation paying, delivering, or

<sup>33</sup> Section 733.710, F.S.

<sup>34</sup> Section 735.206(2), F.S.

<sup>35</sup> Section 735.2063, F.S.

<sup>36</sup> Section 735.206(4)(d)-(f), F.S.

<sup>37</sup> Section 735.206(4)(d), F.S.

<sup>38</sup> Section 735.206(4)(g), F.S.

<sup>39</sup> Section 735.301(1), F.S.

<sup>40</sup> FLA. CONST. art. X, s. 4(a)(2).

<sup>41</sup> Section 735.301(2), F.S.

<sup>42</sup> *Id.*

transferring property under the court's authorization is forever discharged from liability thereon.<sup>43</sup>

### **Florida Unclaimed Property Law**

Chapter 717, F.S., is Florida's law dealing with the disposition of unclaimed property. The most common types of unclaimed property are dormant bank accounts, unclaimed insurance proceeds, stocks, dividends, uncashed checks, deposits, credit balances and refunds. Unclaimed property assets are held by businesses for a set period of time, usually 5 years. Businesses (holders of unclaimed property) are required to try to locate the owner, but when their attempts fail, they must report the property and the owner's name, last known address and other information to the Department of Financial Services. The Department acts as custodian for the State of Florida, but never takes legal ownership of the property. The State uses various methods, including database searches, in an effort to notify owners of their property. Citizens have the right to claim their property, at no cost, any time, regardless of the amount.<sup>44</sup>

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

The bill provides for an informal distribution process for a decedent's bank account or other depository account of \$1,000 or less and provides for the informal disposition of small intestate estates.

#### **Informal Distribution of a Small Bank Account of a Decedent**

The bill authorizes a financial institution to pay the family member of a decedent, without any court proceeding, order, or judgment authorizing the payment, the funds on deposit in all qualified accounts if the total amount of such funds does not exceed \$1,000. The financial institution may make such payment not earlier than 6 months after the date of the decedent's death.

The family member seeking payment must provide the financial institution with a certified copy of the decedent's death certificate, and a sworn affidavit stating that:

- The family member is the surviving spouse, adult child, adult descendant, or parent of the decedent.
- The family member is the appropriate person to receive the funds. For example an adult child of the decedent must attest there is no surviving spouse. A parent of the decedent must attest there is no surviving spouse, no surviving adult children, and no surviving adult descendants.
- The date of death of the decedent and the address of the last residence of the decedent.
- The total amount of all qualified accounts held by the decedent with all financial institutions known to the affiant does not exceed \$1,000.
- A personal representative has not been appointed to administer the estate of the decedent and that no probate or summary administration procedure has been commenced with respect to the estate of the decedent.

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<sup>43</sup> *Id.*

<sup>44</sup> See <https://www.fltreasurehunt.gov/UP-Web/sitePages/FAQs.jsp> (last visited February 14, 2020).

- The affiant has no knowledge of the existence of a will or other document or agreement relating to the distribution of the decedent's estate.
- The payment of the funds constitutes a full release and discharge of the financial institution's obligation regarding the amount paid.
- The affiant understands that he or she is personally liable to the persons rightfully entitled to the funds under the Florida Probate Code, to the extent that the amount paid exceeds the amount properly attributable to the affiant's share.
- The affiant understands that making a false statement in the affidavit may be punishable as a criminal offense.

The bill provides that making a false statement is criminal theft, and might also constitute another crime. Additionally, the bill releases a financial institution from liability upon its disbursement of funds to an affiant and expressly provides that the institution is not required to verify the content of the affidavit.

### **Distribution of Small Intestate Estate's without Probate Administration**

The bill authorizes the distribution of certain small intestate estates without probate administration or other "formal proceedings." To acquire the property of these estates, an heir of a person who has been deceased for at least one year must file an affidavit with the court and serve notice on interested persons; in turn, the court would provide the heir with a letter authorizing anyone holding the decedent's property to release it to the heir. The required content of the affidavit is designed to demonstrate to the court that the rights of any creditors and other heirs are and will be protected.

To be eligible for this option, there must be no administration pending on the estate and it must contain only the following types of property:

- Personal property exempt under the provisions of s. 732.402, F.S., such as household furniture and appliances having a combined value of \$20,000;
- Personal property of up to \$1,000, which is exempt from the claims of creditors under the State Constitution; and
- Nonexempt personal property valued at \$10,000 or less, plus the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of the last illness.

The bill requires the affidavit to be signed and verified by any surviving spouse and any heirs at law, and to be served in the manner of formal notice upon:

- All heirs at law who have not joined in the affidavit;
- All known or reasonably ascertainable creditors of the decedent; and
- The Agency for Health Care Administration, if the decedent was over the age of 55 at the time of death.

Prior to such an application, an heir at law must make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors. Proposed distribution must make provision for payment of any creditors uncovered by the affiant's diligent search, or the creditors must consent to the proposed distribution.

If the court is satisfied that the estate in question is eligible for this type of distribution and that the affidavit is sufficient, the court must provide a letter authorizing the release of property as set forth in the affidavit. The payment, transfer, disposition, delivery, or assignment will result in the following:

- Discharge of liability for any person paying, transferring, delivering, or assigning the property under the court's authorization.
- Bona fide purchasers for value from those to whom personal property of the decedent has been paid, transferred, delivered, or assigned take the property free of claims of creditors of the decedent and all rights of the surviving spouse, other heirs at law, and all other beneficiaries at law of the decedent.
- Nonexempt personal property of the decedent remains subject to claims against the decedent until barred by the Florida Probate Code.
- Recipients of personal property that is not exempt from claims of creditors remain personally liable for a pro rata share of all lawful claims against the decedent's estate, but only to the extent of the value on the date of distribution of the personal property actually received by each recipient.
- Except as otherwise provided in s. 733.710, F.S., once 2 years have passed since the death of the decedent, neither the estate nor those to whom it may be distributed will be liable for any claim against the decedent, unless proceedings to enforce a claim have already begun.
- Any lawfully entitled heir, devisee, or reasonably ascertainable creditor of the decedent who was not included in the distribution retains the ability to enforce their rights in appropriate proceedings against the affiant(s) and those who received distributions, and, if successful, will be awarded costs including reasonable attorney fees in chancery actions.

#### **Effective Date**

The bill takes effect July 1, 2020.

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

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

None.

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

None.

##### **C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

This bill may implicate issues of federal preemption as it applies to “financial institution[s],” a term which, as defined by current Florida law, includes federally chartered financial institutions that the State of Florida does not have authority to regulate.

The Supremacy Clause of the United States Constitution requires courts to follow federal law, not state law, if Congress, in enacting the federal statute, intended to exercise its constitutionally delegated authority to set aside, i.e., preempt, the laws of a state.<sup>45</sup>

The analysis of preemption principles as they apply to state banking laws is complex; banking has been subject to dual [federal-state] regulatory control since the passage of the first National Bank Act in 1863.<sup>46</sup> Generally, federally chartered banks are subject to state laws of general application in their daily business to the extent such laws do not conflict with the letter or the general purposes of the National Bank Act (NBA), or prevent or impair a bank’s exercise of its authority, be it enumerated or incidental.<sup>47</sup>

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

None.

**B. Private Sector Impact:**

The bill could reduce the costs of obtaining property from smaller estates.

**C. Government Sector Impact:**

The bill could decrease the burden on courts by allowing for the distribution of decedent’s bank accounts and other assets without the need for probate administration.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill defines a “family member,” in part, as a spouse, child, or parent of the decedent. As those terms are not defined, strict construction of this definition may preclude an adopted child, or adoptive parent from accessing the funds in a decedent’s account. Incorporating the definitions of those terms by reference to the probate code may alleviate this concern.

<sup>45</sup> *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996), citing U.S. Const., Art. VI, cl. 2; *California Fed. Sav. & Loan Assn. v. Guerra*, 479 U.S. 272 (1987).

<sup>46</sup> *Bank of America v. City and County of San Francisco*, 309 F.3d 551 (9th Cir. 2002), quoting *National State Bank v. Long*, 630 F.2d 981, 985 (3d Cir. 1980).

<sup>47</sup> *Watters v. Wachovia*, 550 U.S. 1 (2007), citing 12 U.S.C. s. 21 *et. seq.*

**VIII. Statutes Affected:**

This bill substantially amends section 655.059 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 735.303 and 735.304.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS/CS by Judiciary on February 19, 2020:**

The committee substitute expands exceptions to a provision generally prohibiting a financial institution from disclosing certain records of a client.

**CS by Banking and Insurance on February 11, 2020:**

The CS contains substantial revisions to this affidavit process, including a decrease in the maximum value of eligible accounts from \$10,000 to \$1,000, a decrease in the amount of time that must pass before the institution can make a payment from 2 years to 6 months and the elimination of a requirement for family members to consent to the financial institution's payment of the funds. The CS also creates a process for the disposition of intestate property of small estates without administration or formal proceedings within the probate code.

**B. Amendments:**

None.

By the Committees on Judiciary; and Banking and Insurance; and  
Senator Baxley

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1 A bill to be entitled  
2 An act relating to the disposition of personal  
3 property; amending s. 655.059, F.S.; specifying that a  
4 financial institution is not prohibited from  
5 disclosing specified information and providing copies  
6 of specified affidavits to certain persons relating to  
7 deceased account holders; creating s. 735.303, F.S.;  
8 providing definitions; authorizing a financial  
9 institution to pay funds on deposit in certain  
10 accounts to a specified family member of a decedent  
11 without any court proceeding, order, or judgment under  
12 certain circumstances; requiring the family member to  
13 provide the financial institution a certified copy of  
14 the decedent's death certificate and a specified  
15 affidavit in order to receive the funds; providing an  
16 affidavit form that the family member may use;  
17 providing that the financial institution has no duty  
18 to make certain determinations; specifying that a  
19 person does not have a right or cause of action  
20 against a financial institution for certain actions or  
21 for failing to take certain actions; providing  
22 liability for the family member who withdraws funds;  
23 requiring a financial institution to maintain a copy  
24 or image of the affidavit for a specified time;  
25 authorizing the financial institution to provide  
26 copies of the affidavit to certain persons; providing  
27 a criminal penalty; creating s. 735.304, F.S.;  
28 providing that estates of certain decedents are not  
29 subject to probate administration if certain

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30 conditions are met; providing that specified persons  
31 may request distribution of a decedent's assets by  
32 affidavit filed with a court under certain  
33 circumstances; providing requirements for content of  
34 the affidavit and service of the affidavit on  
35 specified persons; requiring certain actions relating  
36 to the decedent's creditors; authorizing the court to  
37 approve the affidavit and payment of personal property  
38 under certain circumstances; providing that bona fide  
39 purchasers of personal property take the property free  
40 of certain claims and rights; providing for liability  
41 against certain personal property for a specified  
42 time; providing for liability of recipients of the  
43 decedent's personal property under certain  
44 circumstances; providing a limitation on liability of  
45 the decedent's estate and recipients of the estate  
46 under certain circumstances; providing for the award  
47 of costs and reasonable attorney fees under certain  
48 circumstances; providing an effective date.

49  
50 Be It Enacted by the Legislature of the State of Florida:

51  
52 Section 1. Paragraph (b) of subsection (2) of section  
53 655.059, Florida Statutes, is amended to read:  
54 655.059 Access to books and records; confidentiality;  
55 penalty for disclosure.—  
56 (2)  
57 (b) The books and records pertaining to trust accounts and  
58 the deposit accounts and loans of depositors, borrowers,

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59 members, and stockholders of any financial institution shall be  
 60 kept confidential by the financial institution and its  
 61 directors, officers, and employees and may not be released  
 62 except upon express authorization of the account holder as to  
 63 her or his own accounts, loans, or voting rights. However,  
 64 information relating to any loan made by a financial institution  
 65 may be released without the borrower's authorization in a manner  
 66 prescribed by the board of directors for the purpose of meeting  
 67 the needs of commerce and for fair and accurate credit  
 68 information. Information may also be released, without the  
 69 authorization of a member or depositor but in a manner  
 70 prescribed by the board of directors, to verify or corroborate  
 71 the existence or amount of a customer's or member's account when  
 72 such information is reasonably provided to meet the needs of  
 73 commerce and to ensure accurate credit information. In addition,  
 74 a financial institution, affiliate, and its subsidiaries, and  
 75 any holding company of the financial institution or subsidiary  
 76 of such holding company, may furnish to one another information  
 77 relating to their customers or members, subject to the  
 78 requirement that each corporation receiving information that is  
 79 confidential maintain the confidentiality of such information  
 80 and not provide or disclose such information to any unaffiliated  
 81 person or entity. Notwithstanding this paragraph, this  
 82 subsection does not prohibit:

83 1. A financial institution from disclosing financial  
 84 information as referenced in this subsection as authorized by  
 85 ~~Pub. L. No. 106-102 (1999), as set forth in 15 U.S.C. s. 6802~~  
 86 (2010) U.S.C.A. s. 6802, as amended.

87 2. The Florida office of the international banking

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88 corporation or international trust entity from sharing books and  
 89 records under this subsection with the home-country supervisor  
 90 in accordance with subsection (1).

91 3. A financial institution from disclosing the existence of  
 92 and amounts on deposit in any qualified account of a decedent  
 93 pursuant to s. 735.303 and from providing a copy of any  
 94 affidavit delivered to the financial institution pursuant  
 95 thereto, to a person authorized to receive such information  
 96 under s. 735.303.

97 4. A financial institution from disclosing the existence of  
 98 and amounts on deposit in any individual account of a decedent  
 99 to a petitioner that filed with the court a petition pursuant to  
 100 s. 734.1025 or s. 735.203, or to an affiant that filed with the  
 101 court an affidavit for disposition without administration  
 102 pursuant to s. 735.301 or s. 735.304.

103 Section 2. Section 735.303, Florida Statutes, is created to  
 104 read:

105 735.303 Payment to successor without court proceedings.—

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

107 (a) "Family member" means:

108 1. The surviving spouse of the decedent;

109 2. An adult child of the decedent if the decedent left no  
 110 surviving spouse;

111 3. An adult descendant of the decedent if the decedent  
 112 left no surviving spouse and no surviving adult child; or

113 4. A parent of the decedent if the decedent left no  
 114 surviving spouse, no surviving adult child, and no surviving  
 115 adult descendant.

116 (b) "Qualified account" means a depository account or

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117 certificate of deposit held by a financial institution in the  
 118 sole name of the decedent without a pay-on-death or any other  
 119 survivor designation.

120 (2) A financial institution in this state may pay to the  
 121 family member of a decedent, without any court proceeding,  
 122 order, or judgment, the funds on deposit in all qualified  
 123 accounts of the decedent at the financial institution if the  
 124 total amount of the combined funds in the qualified accounts at  
 125 the financial institution does not exceed an aggregate total of  
 126 \$1,000. The financial institution may not make such payment  
 127 earlier than 6 months after the date of the decedent's death.

128 (3) In order to receive the funds described in subsection  
 129 (2), the family member must provide to the financial institution  
 130 a certified copy of the decedent's death certificate and a sworn  
 131 affidavit that includes all of the following:

132 (a) A statement attesting that the affiant is the surviving  
 133 spouse, adult child, adult descendant, or parent of the  
 134 decedent.

135 1. If the affiant is an adult child of the decedent, the  
 136 affidavit must attest that the decedent left no surviving  
 137 spouse.

138 2. If the affiant is an adult descendant of the decedent,  
 139 the affidavit must attest that the decedent left no surviving  
 140 spouse and no surviving adult child.

141 3. If the affiant is a parent of the decedent, the  
 142 affidavit must attest that the decedent left no surviving  
 143 spouse, no surviving adult child, and no surviving adult  
 144 descendant.

145 (b) The date of death and the address of the decedent's

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146 last residence.

147 (c) A statement attesting that the total amount in all  
 148 qualified accounts held by the decedent in all financial  
 149 institutions known to the affiant does not exceed an aggregate  
 150 total of \$1,000.

151 (d) A statement acknowledging that a personal  
 152 representative has not been appointed to administer the  
 153 decedent's estate and attesting that no probate proceeding or  
 154 summary administration procedure has been commenced with respect  
 155 to the estate.

156 (e) A statement acknowledging that the affiant has no  
 157 knowledge of the existence of any last will and testament or  
 158 other document or agreement relating to the distribution of the  
 159 decedent's estate.

160 (f) A statement acknowledging that the payment of the funds  
 161 constitutes a full release and discharge of the financial  
 162 institution's obligation regarding the amount paid.

163 (g) A statement acknowledging that the affiant understands  
 164 that he or she is personally liable to the creditors of the  
 165 decedent and other persons rightfully entitled to the funds  
 166 under the Florida Probate Code, to the extent the amount paid  
 167 exceeds the amount properly attributable to the affiant's share.

168 (h) A statement acknowledging that the affiant understands  
 169 that making a false statement in the affidavit may be punishable  
 170 as a criminal offense.

171 (4) The family member may use an affidavit in substantially  
 172 the following form to fulfill the requirements of subsection  
 173 (3):

174

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175 AFFIDAVIT UNDER SECTION 735.303, FLORIDA STATUTES, TO OBTAIN  
 176 BANK PROPERTY OF DECEASED ACCOUNT HOLDER: ... (Name of  
 177 decedent)...  
 178 State of ....  
 179 County of ....  
 180  
 181 Before the undersigned authority personally appeared ... (name of  
 182 affiant)..., of ... (residential address of affiant)..., who has  
 183 been sworn and says the following statements are true:  
 184 (a) The affiant is (initial one of the following  
 185 responses):  
 186 .... The surviving spouse of the decedent.  
 187 .... A surviving adult child of the decedent, and the  
 188 decedent left no surviving spouse.  
 189 .... A surviving adult descendant of the decedent, and the  
 190 decedent left no surviving spouse and no surviving adult child.  
 191 .... A surviving parent of the decedent, and the decedent  
 192 left no surviving spouse, no surviving adult child, and no  
 193 surviving adult descendant.  
 194 (b) As shown in the certified death certificate, the date  
 195 of death of the decedent was ... (date of death)..., and the  
 196 address of the decedent's last residence was ... (address of last  
 197 residence)....  
 198 (c) The affiant is entitled to payment of the funds in the  
 199 decedent's depository accounts and certificates of deposit held  
 200 by the financial institution ... (name of financial  
 201 institution).... The total amount in all qualified accounts held  
 202 by the decedent in all financial institutions known to the  
 203 affiant does not exceed an aggregate total of \$1,000. The

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204 affiant requests full payment from the financial institution.  
 205 (d) A personal representative has not been appointed to  
 206 administer the decedent's estate and no probate proceeding or  
 207 summary administration procedure has been commenced with respect  
 208 to the estate.  
 209 (e) The affiant has no knowledge of any last will and  
 210 testament or other document or agreement relating to the  
 211 distribution of the decedent's estate.  
 212 (f) The payment of the funds constitutes a full release and  
 213 discharge of the financial institution regarding the amount  
 214 paid.  
 215 (g) The affiant understands that he or she is personally  
 216 liable to the creditors of the decedent and other persons  
 217 rightfully entitled to the funds under the Florida Probate Code,  
 218 to the extent the amount paid exceeds the amount properly  
 219 attributable to the affiant's share.  
 220 (h) The affiant understands that making a false statement  
 221 in this affidavit may be punishable as a criminal offense.  
 222  
 223 By ... (signature of Affiant)...  
 224  
 225 Sworn to and subscribed before me this ... day of  
 226 ... by ... (name of Affiant)..., who is personally  
 227 known to me or produced ... as identification, and  
 228 did take an oath.  
 229  
 230 ... (Signature of Notary Public - State of Florida)...  
 231 ... (Print, Type, or Stamp Commissioned Name of Notary  
 232 Public)...

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233 My commission expires: ... (date of expiration of  
 234 commission)...

235 (5) The financial institution is not required to determine  
 236 whether the contents of the sworn affidavit are truthful. The  
 237 payment of the funds by the financial institution to the affiant  
 238 constitutes the financial institution's full release and  
 239 discharge regarding the amount paid. A person does not have a  
 240 right or cause of action against the financial institution for  
 241 taking an action, or for failing to take an action, in  
 242 connection with the affidavit or the payment of the funds.

243 (6) The family member who withdraws the funds under this  
 244 section is personally liable to the creditors of the decedent  
 245 and any other person rightfully entitled to the funds under the  
 246 Florida Probate Code to the extent the amount paid exceeds the  
 247 amount properly attributable to the family member's share.

248 (7) The financial institution shall maintain a copy or an  
 249 image of the affidavit in accordance with its customary  
 250 retention policies. If a surviving spouse or descendant of the  
 251 decedent requests a copy of the affidavit during such time, the  
 252 financial institution may provide a copy of the affidavit to the  
 253 requesting surviving spouse or descendant of the decedent.

254 (8) In addition to any other penalty provided by law, a  
 255 person who knowingly makes a false statement in a sworn  
 256 affidavit given to a financial institution to receive a  
 257 decedent's funds under this section commits theft, punishable as  
 258 provided in s. 812.014.

259 Section 3. Section 735.304, Florida Statutes, is created to  
 260 read:

261 735.304 Disposition without administration of intestate

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262 property in small estates.-

263 (1) No administration shall be required or formal  
 264 proceedings instituted upon the estate of a decedent who has  
 265 died intestate leaving only personal property exempt under the  
 266 provisions of s. 732.402, personal property exempt from the  
 267 claims of creditors under the State Constitution, and nonexempt  
 268 personal property the value of which does not exceed the sum of  
 269 \$10,000 and the amount of preferred funeral expenses and  
 270 reasonable and necessary medical and hospital expenses of the  
 271 last 60 days of the last illness, provided the decedent has been  
 272 deceased for more than 1 year and no administration of the  
 273 decedent's estate is pending in this state.

274 (2) Any heir at law of the decedent entitled to a share of  
 275 the intestate estate pursuant to s. 732.102 or s. 732.103 may by  
 276 affidavit request distribution of assets of the decedent through  
 277 informal application under this section. The affidavit must be  
 278 signed and verified by the surviving spouse, if any, and any  
 279 heirs at law, except that joinder in the affidavit is not  
 280 required of an heir who will receive a full intestate share  
 281 under the proposed distribution of the personal property. Before  
 282 the filing of the affidavit, the affiant must make a diligent  
 283 search and reasonable inquiry for any known or reasonably  
 284 ascertainable creditors, and the proposed distribution must make  
 285 provision for payment of those creditors to the extent that  
 286 assets are available or the creditors must consent to the  
 287 proposed distribution. The affidavit must be served in the  
 288 manner of formal notice upon all heirs at law who have not  
 289 joined in the affidavit; upon all known or reasonably  
 290 ascertainable creditors of the decedent; and, if the decedent at

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291 the time of death was over the age of 55 years of age, upon the  
 292 Agency for Health Care Administration.

293 (3) If the court is satisfied that subsection (1) is  
 294 applicable and the affidavit filed by the heir at law meets the  
 295 requirements of subsection (2), the court, by letter or other  
 296 writing under the seal of the court, may authorize the payment,  
 297 transfer, disposition, delivery, or assignment of the tangible  
 298 or intangible personal property to those persons entitled.

299 (a) Any individual, corporation, or other person paying,  
 300 transferring, delivering, or assigning personal property under  
 301 the authorization shall be forever discharged from liability  
 302 thereon.

303 (b) Bona fide purchasers for value from those to whom  
 304 personal property of the decedent has been paid, transferred,  
 305 delivered, or assigned shall take the property free of all  
 306 claims of creditors of the decedent and all rights of the  
 307 surviving spouse and all other beneficiaries or heirs at law of  
 308 the decedent.

309 (c) Personal property of the decedent that is not exempt  
 310 from claims of creditors and that remains in the possession of  
 311 those to whom it has been paid, delivered, transferred, or  
 312 assigned shall continue to be liable for claims against the  
 313 decedent until barred as provided in the Florida Probate Code.  
 314 Any known or reasonably ascertainable creditor who did not  
 315 consent to the proposed distribution and for whom provision for  
 316 payment was not made may enforce the claim and, if the creditor  
 317 prevails, shall be awarded costs, including reasonable attorney  
 318 fees, against those who joined in the affidavit.

319 (d) Recipients of the decedent's personal property under

Page 11 of 12

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

590-03951-20

2020380c2

320 this section shall be personally liable for a pro rata share of  
 321 all lawful claims against the estate of the decedent, but only  
 322 to the extent of the value on the date of distribution of the  
 323 personal property actually received by each recipient, exclusive  
 324 of the property exempt from claims of creditors under the State  
 325 Constitution and Florida Statutes.

326 (e) Except as otherwise provided in s. 733.710, after 2  
 327 years from the death of the decedent, neither the decedent's  
 328 estate nor those to whom it may be distributed shall be liable  
 329 for any claim against the decedent, unless within that time  
 330 proceedings have been taken for the enforcement of the claim.

331 (f) Any heir or devisee of the decedent who was lawfully  
 332 entitled to share in the estate but who was not included in the  
 333 distribution under this section may enforce all rights in  
 334 appropriate proceedings against those who signed the affidavit  
 335 or received distribution of personal property and, if  
 336 successful, shall be awarded costs including reasonable attorney  
 337 fees as in chancery actions.

338 Section 4. This act shall take effect July 1, 2020.

Page 12 of 12

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

# THE FLORIDA SENATE

COMMITTEES:  
Ethics and Elections, *Chair*  
Appropriations Subcommittee on Education  
Education  
Finance and Tax  
Health Policy  
Judiciary

JOINT COMMITTEE:  
Joint Legislative Auditing Committee

**SENATOR DENNIS BAXLEY**  
12th District

February 19, 2020

The Honorable Chair Lizbeth Benacquisto  
400 Senate Office Building  
Tallahassee, FL 32399

Dear Chair Benacquisto,

I would like to request CS/SB 380 Bank Property of Deceased Account Holders be heard in the next Rules Committee meeting.

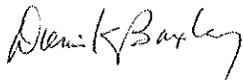
This bill authorizes a financial institution to pay to the surviving successor of a decedent, without any court proceedings, order, or judgement authorizing the payment, the funds on deposit in all qualified accounts of the decedent.

For accounts \$1,000 or less, designated surviving successors would be able to present a sworn affidavit to the financial institution 6 months or more after the decedent has passed. After one year from the passing of the decedent, an heir at law of the decedent would be able to petition a court to receive up to \$10,000 of nonexempt assets, which would include accounts at a financial institution, without a formal administration if the decedent passed without a will.

Rightful successors deserve a better process than having to wait over five years to receive these funds when they are able to demonstrate a right to receive them before they escheat to state government.

I appreciate your favorable consideration.

Onward & Upward,



Senator Dennis Baxley  
Senate District 12

DKB/dd

cc: John Phelps, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012  
Email: [baxley.dennis@flsenate.gov](mailto:baxley.dennis@flsenate.gov)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/20

Meeting Date

SB 380

Bill Number (if applicable)

Topic Disposition of Personal Property

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd Ste 201

Phone 850-509-8020

Street

Tallahassee

City

FL

State

32301

Zip

Email kpratt@floridabankers.com

Speaking:  For  Against  Information

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

Representing Florida Bankers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

**BILL:** CS/SB 880

**INTRODUCER:** Banking and Insurance Committee and Senator Baxley

**SUBJECT:** Nurse Registry

**DATE:** February 24, 2020      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<b>Fav/CS</b>
2.	<u>Rossitto-Van Winkle</u>	<u>Brown</u>	<u>HP</u>	<b>Favorable</b>
3.	<u>Arnold</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 880 authorizes an employer or workers' compensation insurer to use a licensed nurse registry to place authorized compensable attendant care services for the benefit of an injured worker under the Workers' Compensation Law.

The bill takes effect July 1, 2020.

**II. Present Situation:**

**Workers' Compensation and Attendant Care Benefits**

Workers' compensation provides medical benefits and, in cases where the injured worker is unable to work or earn as much as he or she did before the injury, compensation for lost income (also referred to as "wage replacement" or "indemnity" benefits) for compensable workplace injuries arising out of work performed by an employee in the course and scope of employment.<sup>1</sup> Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.<sup>2</sup> Medical services must be

---

<sup>1</sup> Section 440.09(1), F.S.

<sup>2</sup> Section 440.13(2)(a), F.S.

provided by a health care provider authorized by the workers' compensation insurance company prior to being provided (except for emergency care).<sup>3</sup>

There are several types of medical care provided to injured workers both inside and outside of medical facilities, including emergency, interventional, palliative, rehabilitative, and attendant. "Attendant care" means care rendered by trained professional attendants that is beyond the scope of household duties.<sup>4</sup> Attendant care includes a wide variety of services from skilled nursing care to unskilled tasks, such as bathing, dressing, personal hygiene, and administration of medications. Most attendant care is provided by licensed medical providers; however, family members may provide and receive carrier payment for non-professional attendant care services, excluding normal household duties.<sup>5</sup>

According to a home health care study performed by the Cleveland Clinic, providing in-home attendant care has significant advantages for both the injured worker and the carrier. The injured worker can be more comfortable than in an institution and realize better outcomes, both physically and mentally, concurrent with the carrier achieving significant cost savings.<sup>6</sup> Under current law, carriers are not specifically prohibited from using a nurse registry or a home health agency to obtain professional and non-professional attendant care for the injured worker.

### **Placement of Attendant Care Services Through Nurse Registries and Home Health Agencies**

A nurse registry is a business that procures, offers, promises, or attempts to procure health care related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, homemakers, and companions to provide services to patients in their homes and temporary staff to health care facilities or other business entities.<sup>7</sup> Nurse registries are governed by part II of ch. 408, F.S.,<sup>8</sup> and associated rules in Florida Administrative Code Rule 59A-35; and the nurse registry rules in Florida Administrative Code Rule 59A-19. A nurse registry must be licensed by the Agency for Health Care Administration (AHCA), pursuant to part III of ch. 400, F.S., to lawfully offer contracts in Florida.<sup>9</sup>

The providers referred by the nurse registry are hired as independent contractors by the patient, health care facility, or another business entity (e.g., a workers' compensation carrier).<sup>10</sup> This is a key defining feature of a nurse registry: It cannot have any employees except for the administrator, alternate administrator, and office staff. All individuals referred by a nurse registry who enter the home of patients to provide direct care must be independent contractors.

---

<sup>3</sup> Section 440.13(3)(a), F.S.

<sup>4</sup> Section 440.13(1)(b), F.S. Attendant care must be medically necessary and performed at the direction and control of an authorized treating physician pursuant to a written prescription. Section 440.13(2)(b), F.S.

<sup>5</sup> The valuation of family-member provided attendant care is limited in both duration and cost. Section 440.13(2)(b), F.S.

<sup>6</sup> A home health care study performed by the Cleveland Clinic found average per patient savings of \$6,433 in the first year after discharge, decrease in readmissions by 18 percent, and decrease in deaths by 20 percent. Roy Xiao et al., *Impact of Home Health Care on Health Care Resource Utilization Following Hospital Discharge: A Cohort Study*, *The American Journal of Medicine*, April 2018, Volume 131, Issue 4, pp. 395-407, e35.

<sup>7</sup> Section 400.462(21), F.S.

<sup>8</sup> Section 400.506(2), F.S. A nurse registry is also governed by the provisions in s. 400.506, F.S.

<sup>9</sup> Section 400.506(1), F.S.

<sup>10</sup> *Supra* note 7.

Home health agencies (HHAs) are organizations that provide health and medical services and medical supplies to an individual in the individual's home or place of residence.<sup>11</sup> HHAs are governed by part II of ch. 408, F.S.,<sup>12</sup> associated rules in Florida Administrative Code Rules 59A-35, and 59A-8. Like a nurse registry, an HHA must be licensed by AHCA, pursuant to part III of ch. 400, F.S., to lawfully offer contracts in Florida.<sup>13</sup>

The key difference between HHAs and nurse registries is the nature of the employment relationship with the health care professionals with whom they contract. Health care providers who contract with an HHA are employees of that agency. In contrast, health care providers who contract with nurse registries are independent contractors. Additionally, while a nurse registry and an HHA may provide services that are privately paid for by insurance or other means to patients in their home or place of residence and provide staff to health care facilities, schools, or other business entities, a nurse registry does not qualify for Medicare reimbursements; an HHA qualifies for such reimbursement.<sup>14</sup>

Florida's Workers' Compensation Law is silent regarding how attendant care providers are selected to provide authorized compensable care for injured workers. A workers' compensation carrier is neither prohibited nor specifically authorized to use a nurse registry to place attendant care providers for the benefit of an injured worker.

### III. Effect of Proposed Changes:

**Section 1** amends s. 440.13, F.S., to specifically authorize an employer or workers' compensation insurer to use a licensed nurse registry to place authorized, compensable attendant care services for the benefit of an injured worker under the Workers' Compensation Law.

**Section 2** provides an effective date of July 1, 2020.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

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<sup>11</sup> Section 400.462(12), (14), F.S.

<sup>12</sup> Section 400.464(1), F.S. An HHA is also governed by the provisions in s. 400.464, F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Centers for Medicare & Medicaid Services, *Medicare & Home Health Care*,

<https://www.medicare.gov/sites/default/files/2018-07/10969-medicare-and-home-health-care.pdf> (last visited Feb. 6, 2020).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 440.13 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS by Banking and Insurance on January 15, 2020:**

Authorizes an employer or workers' compensation insurer to use a licensed nurse registry to place authorized compensable attendant care services for the benefit of an injured worker under the Workers' Compensation Law. The underlying bill referred to the nurse registry providing attendant care services.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Baxley

597-02276-20

2020880c1

1 A bill to be entitled  
 2 An act relating to the nurse registry; amending s.  
 3 440.13, F.S.; authorizing the use of licensed nurse  
 4 registries for the placement of attendant care  
 5 provided for workers' compensation purposes;  
 6 reenacting s. 440.134(16), F.S., relating to workers'  
 7 compensation managed care arrangements, to incorporate  
 8 the amendment made to s. 440.13, F.S., in a reference  
 9 thereto; providing an effective date.

10  
 11 Be It Enacted by the Legislature of the State of Florida:

12  
 13 Section 1. Paragraph (b) of subsection (2) of section  
 14 440.13, Florida Statutes, is amended to read:

15 440.13 Medical services and supplies; penalty for  
 16 violations; limitations.—

17 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.—

18 (b)1. The employer shall provide appropriate professional  
 19 or nonprofessional attendant care performed only at the  
 20 direction and control of a physician when such care is medically  
 21 necessary. The physician shall prescribe such care in writing.  
 22 The employer or carrier shall not be responsible for such care  
 23 until the prescription for attendant care is received by the  
 24 employer and carrier, which shall specify the time periods for  
 25 such care, the level of care required, and the type of  
 26 assistance required. A prescription for attendant care shall not  
 27 prescribe such care retroactively. The value of nonprofessional  
 28 attendant care provided by a family member must be determined as  
 29 follows:

Page 1 of 3

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

597-02276-20

2020880c1

30 ~~a.1.~~ If the family member is not employed or if the family  
 31 member is employed and is providing attendant care services  
 32 during hours that he or she is not engaged in employment, the  
 33 per-hour value equals the federal minimum hourly wage.

34 ~~b.2.~~ If the family member is employed and elects to leave  
 35 that employment to provide attendant or custodial care, the per-  
 36 hour value of that care equals the per-hour value of the family  
 37 member's former employment, not to exceed the per-hour value of  
 38 such care available in the community at large. A family member  
 39 or a combination of family members providing nonprofessional  
 40 attendant care under this paragraph may not be compensated for  
 41 more than a total of 12 hours per day.

42 ~~c.3.~~ If the family member remains employed while providing  
 43 attendant or custodial care, the per-hour value of that care  
 44 equals the per-hour value of the family member's employment, not  
 45 to exceed the per-hour value of such care available in the  
 46 community at large.

47 2. The employer or carrier may use a nurse registry  
 48 pursuant to s. 400.506 for the placement of authorized  
 49 compensable attendant care services.

50  
 51 Failure of the carrier to timely comply with this subsection  
 52 shall be a violation of this chapter and the carrier shall be  
 53 subject to penalties as provided for in s. 440.525.

54 Section 2. For the purpose of incorporating the amendment  
 55 made by this act to section 440.13(2)(b), Florida Statutes, in a  
 56 reference thereto, subsection (16) of section 440.134, Florida  
 57 Statutes, is reenacted to read:  
 58 440.134 Workers' compensation managed care arrangement.—

Page 2 of 3

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

597-02276-20

2020880c1

59 (16) When a carrier enters into a managed care arrangement  
60 pursuant to this section the employees who are covered by the  
61 provisions of such arrangement shall be deemed to have received  
62 all the benefits to which they are entitled pursuant to s.  
63 440.13(2) (a) and (b). In addition, the employer shall be deemed  
64 to have complied completely with the requirements of such  
65 provisions. The provisions governing managed care arrangements  
66 shall govern exclusively unless specifically stated otherwise in  
67 this section.

68 Section 3. This act shall take effect July 1, 2020.

# THE FLORIDA SENATE

**COMMITTEES:**  
Ethics and Elections, *Chair*  
Appropriations Subcommittee on Education  
Education  
Finance and Tax  
Health Policy  
Judiciary

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee

**SENATOR DENNIS BAXLEY**

12th District

February 18, 2020

The Honorable Chair Lizbeth Benacquisto  
400 Senate Office Building  
Tallahassee, Florida 32399

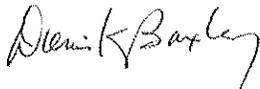
Dear Chair Benacquisto,

I would like to request that SB 880 Nurse Registry be heard in the next Rules Committee meeting.

This bill authorizes an employer or worker's compensation insurer to use a licensed nurse registry to place authorized compensable attendant care services for the benefit of an injured worker under the Worker's Compensation Law.

Thank you for your favorable consideration.

Onward & Upward,



Senator Dennis K. Baxley  
Senate District 12

DKB/dd

cc: John Phelps, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012  
Email: [baxley.dennis@flsenate.gov](mailto:baxley.dennis@flsenate.gov)

Bill Galvano  
President of the Senate

David Simmons  
President Pro Tempore

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

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

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Prepared By: The Professional Staff of the Committee on Rules

---

BILL: CS/SB 1636

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Baxley

SUBJECT: Repeal of Advisory Bodies and Councils

DATE: February 24, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Toman</u>	<u>Ryon</u>	<u>CA</u>	<u>Favorable</u>
3.	<u>McVaney</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1636 abolishes specific advisory bodies and programs that are no longer active, necessary, or beneficial to the furtherance of a public purpose. Specifically, this bill abolishes the following entities and the statutory references relating to:

- Citrus/Hernando Waterways Restoration Council;
- My Safe Florida Home Program Advisory Council;
- Ad hoc committee for the Great Floridian Program within the Department of State;
- Geneva Freshwater Lens Task Force;
- Brownfield Areas Loan Guarantee Council;
- Nonmandatory Land Reclamation Committee;
- Sturgeon Production Working Group;
- Trap Certificate Technical Advisory Appeals Board;
- Clean Fuel Florida Advisory Board;
- Technical advisory council for water and domestic wastewater operator certification;
- Technical advisory panels for Florida Health Choices, Inc.;
- Technical advisory panel relating to result-oriented accountability program within the Department of Children and Families;
- Learning Gateway steering committee;
- Department of Elderly Affairs Advisory Council;
- Florida Agricultural Promotion Campaign Advisory Council;
- Healthy Schools for Healthy Lives Council;

- Tropical Fruit Advisory Council;
- Board of Governors Advisory board relating to online baccalaureate degree programs; and
- Florida Early Learning Advisory Council.

The bill takes effect July 1, 2020.

## II. Present Situation:

### Advisory Bodies, Commissions, and Boards

Under the organizational structure of the executive branch of state government, a “council” or “advisory council” is

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.<sup>1</sup>

An advisory body, commission, board of trustees, or any other collegial body created by specific statutory authority as an adjunct to an executive agency must be established, evaluated, and maintained in accordance with the following provisions:<sup>2</sup>

- It may be created only when it is necessary and beneficial to the furtherance of a public purpose;
- It must be terminated when it is no longer necessary and beneficial to the furtherance of a public purpose;
- The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of advisory bodies, commissions, boards of trustees, and other collegial bodies established as adjuncts to executive agencies; and
- It must meet a statutorily defined purpose and its power must conform to the definitions for governmental units.

Because these advisory bodies are codified in statute, the Legislature must take an affirmative action to abolish the advisory bodies.

### *Citrus/Hernando Waterways Restoration Council*

The Citrus/Hernando Waterways Restoration Council was established, in 2003, in response to regional concerns for the health of Citrus and Hernando county waterways.<sup>3</sup> It is the council’s responsibility to review audits and all data specifically related to lake and river restoration techniques and sport fish population recovery strategies, evaluate whether additional studies are needed, explore all possible sources of funding to conduct restoration activities, and report to the Legislature on the progress made and any recommendations for the next fiscal year. The council last submitted an annual report in 2015.

---

<sup>1</sup> Section 20.03(6), F.S.

<sup>2</sup> Section 20.052, F.S.

<sup>3</sup> Ch. 2003-28, Laws of Fla. In 2006, the Legislature expanded the council’s responsibilities to include all of the waterways in Citrus and Hernando Counties. Ch. 2006-43, Laws of Fla.

In 2014, the Southwest Florida Water Management District formed its Springs Coast Steering Committee, which performs the same work as the council.

### ***My Safe Florida Home Program Advisory Council***

The My Safe Florida Home Program is established within the Department of Financial Services (DFS) to develop and implement a comprehensive and coordinated approach for hurricane damage mitigation. The program provides trained and certified inspectors to perform inspections for owners of site-built, single-family, residential properties. It also provides grants to eligible applicants as funding allows.

In 2006, the My Safe Florida Home Program Advisory Council was established to advise DFS in its administration of the program.<sup>4</sup> The program, after fulfilling its purpose, ceased operations in 2008. As such, the council has not been utilized.

### ***The Great Floridian Program***

The Great Floridian Program is a program administered under the Division of Historical Resources within the Department of State to recognize and record the achievements of Floridians, living and deceased, who have made major contributions to the progress and welfare of this state.<sup>5</sup> Annually, the division must convene an ad hoc committee to nominate not fewer than two persons whose names must be submitted to the Secretary of State with the recommendation that they be honored with the designation “Great Floridian.”<sup>6</sup>

The last time Great Floridian recognitions were made was in 2013. In addition, a 2008 sunset review report by the Office of Program Policy Analysis and Government Accountability recommended abolishing the committee.<sup>7</sup>

### ***Geneva Freshwater Lens Task Force***

The Geneva Freshwater Lens Task Force was created in 1993 to provide a means by which representatives from state agencies, local government, water management districts, environmental organizations, industry, and the public at large could evaluate the management needs of the Geneva Freshwater Lens for the proper protection of the public interest and to recommend actions for addressing any deficiencies discovered.<sup>8</sup> The task force was directed to present a report to the President of the Senate and the Speaker of the House of Representatives by December 1, 1993, which evaluated the adequacy of current planning, regulatory, and other programs and made recommendations for future management of the Geneva Freshwater Lens.<sup>9</sup>

---

<sup>4</sup> Section 215.5586(4), F.S.

<sup>5</sup> Section 267.0731, F.S.

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

<sup>7</sup> The Florida Legislature Sunset Review: Office of Program Policy Analysis and Government Accountability, *Department of State Advisory Committees Assessment*, 7 (Dec. 2008), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/08-S12.pdf> (last visited Feb.12, 2020).

<sup>8</sup> Ch. 93-273, Laws of Fla.

<sup>9</sup> *Id.*

The task force submitted its report and in 1995, the Legislature directed the appropriate state agencies to implement the recommendations of the Geneva Freshwater Lens Task Force.<sup>10</sup>

### ***Brownfield Areas Loan Guarantee Council***

The Brownfield Areas Loan Guarantee Council was established in 1998 to support the Brownfield Areas Loan Guarantee Program, which provides tax credits for rehabilitation of brownfield sites in designated brownfield areas. The term “brownfield sites” means real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.<sup>11</sup> The term “brownfield area” means a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution. Brownfield areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and Environmental Protection Agency-designated brownfield pilot projects.<sup>12</sup>

The Brownfield Areas Loan Guarantee Council reviews certain partnership agreements with local governments, financial institutions, and other entities associated with the redevelopment of brownfields for limited guarantees of loans or loss reserves.<sup>13</sup> By 2006, the loan guarantee provisions had been used only once. As such, the council does not appear to be active.

### ***Nonmandatory Land Reclamation Committee***

The Nonmandatory Land Reclamation Committee was created within the Department of Environmental Protection (DEP) to advise the department on nonmandatory land reclamation and recommend approval, modification, or denial of reclamation grant applications submitted by landowners for lands disturbed by phosphate mining prior to July 1, 1975.<sup>14</sup> According to DEP’s website, all projects for nonmandatory land reclamation have been identified and selected.<sup>15</sup> No new applicants are being accepted as the funding program will end when the last of the projects are funded and released. As such, the committee appears to be inactive.

### ***Sturgeon Production Working Group***

The Sturgeon Production Working Group was created within the Department of Agriculture and Consumer Services (DACS) to coordinate the implementation of a state sturgeon production management plan to promote the commercial production and stock enhancement of sturgeon in the state.<sup>16</sup> The group has not met since 2009.

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<sup>10</sup> Ch. 95-377, Laws of Fla.; codified at section 373.4597(3), F.S.

<sup>11</sup> Section 376.79(4), F.S.

<sup>12</sup> Section 376.79(5), F.S.

<sup>13</sup> Section 376.86, F.S.

<sup>14</sup> Section 378.033, F.S. *See also* Nonmandatory Land Reclamation Program, DEP website, *available at* <https://floridadep.gov/water/mine-restoration-funding-program> (last visited Feb. 12, 2020).

<sup>15</sup> Nonmandatory Land Reclamation Program, DEP website, *available at* <https://floridadep.gov/water/mine-restoration-funding-program> (last visited Feb. 12, 2020).

<sup>16</sup> Section 379.2524, F.S.

***Trap Certificate Technical Advisory and Appeals Board***

The Trap Certificate Technical Advisory and Appeals Board was established to consider and advise the Florida Fish and Wildlife Conservation Commission (FWC) on disputes and other problems arising from the implementation of the spiny lobster trap certificate program.<sup>17</sup> Current law provides that, beginning July 1, 1994, the board will no longer consider and advise FWC on disputes and other problems arising from implementation of the trap certificate program or allotment of certificates.<sup>18</sup> As such, the board no longer appears to be active or necessary.

***Clean Fuel Florida Advisory Board***

The Clean Fuel Florida Advisory Board was established within DEP to serve as a resource to the department and to provide the Governor, the Legislature, and the Secretary of DEP with private sector and other public agency perspectives on achieving the goal of increasing the use of alternative fuel vehicles in this state.<sup>19</sup> Current law provides for termination of the board five years after the effective date of s. 403.42, F.S.<sup>20</sup> The board appears to have terminated in 2006.

***Technical Advisory Council, Water and Domestic Wastewater Operator Certification***

The Technical Advisory Council for Water and Domestic Wastewater Operator Certification was established in 1997 to advise DEP regarding the operator certification program and provide expertise on water and wastewater treatment.<sup>21</sup> The council does not appear to be active. In addition, DEP has a separate water and domestic wastewater operator certification program and likely does not need an advisory council.

***Florida Health Choices Corporation***

The Florida Health Choices Corporation (corporation) was established in 2008 to create an online market for diverse health care coverage products, particularly for small businesses, as an Internal Revenue Code s. 125 cafeteria plan using pre-tax dollars.<sup>22</sup> The corporation is governed by a 15-member board of directors made up of members appointed by the Speaker, President, and Governor, as well as state agency ex-officio members.<sup>23</sup> The board of directors may establish technical advisory panels consisting of interested parties, including consumers, health care providers, individuals with expertise in insurance regulation, and insurers.<sup>24</sup> The last appropriation of funding for the corporation was vetoed in 2017. As such, the corporation does not appear to be active and the authority to establish advisory panels no longer appears to be necessary.

***Technical Advisory Panel, Child Welfare Results-Oriented Accountability Program***

The child welfare results-oriented accountability program monitors and measures the use of resources, the quality and amount of services provided, and child and family outcomes in

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<sup>17</sup> Section 379.3671, F.S.

<sup>18</sup> Section 379.3671(4)(i), F.S.

<sup>19</sup> Section 403.42(3), F.S.

<sup>20</sup> Section 403.42(3)(b)7., F.S.

<sup>21</sup> Section 403.87, F.S.

<sup>22</sup> See section 408.910, F.S.

<sup>23</sup> Section 408.910(11)(a), F.S.

<sup>24</sup> Section 408.910(11)(h), F.S.

Florida's child welfare system.<sup>25</sup> Current law requires the Department of Children and Families (DCF) to establish a technical advisory panel to advise DCF on the implementation of the results-oriented accountability program.<sup>26</sup> It appears DCF is no longer using this technical advisory panel for advice on implementing the program.

### ***Learning Gateway Steering Committee***

In 2002, the Legislature authorized a three-year demonstration program called the Learning Gateway. The purpose of Learning Gateway is to provide parents access to information, referral, and services to lessen the effects of learning disabilities in children from birth to age 9.<sup>27</sup>

The Learning Gateway Steering Committee was established within the Department of Education to provide policy development, consultation, oversight, and support for the implementation of the Learning Gateway Programs and to advise the agencies, the Legislature, and the Governor on statewide implementation of system components and issues and on strategies for continuing improvement to the system.<sup>28</sup> No appointments have been made to the steering committee since the original three-year term appointments, and the steering committee was marked as inactive in 2014.

### ***Department of Elderly Affairs Advisory Council***

The Department of Elderly Affairs Advisory Council was established within the Department of Elderly Affairs to serve in an advisory capacity to the Secretary of Elderly Affairs and to assist the secretary in carrying out the purpose, duties, and responsibilities of the department.<sup>29</sup> The advisory council is not required to submit any reports and only appears to serve as an advisor to the secretary, who may create an ad hoc group to advise him or her at any time. As such, the establishment of the advisory council in statute appears unnecessary.

### ***Florida Agricultural Promotional Campaign Advisory Council***

The Florida Agricultural Promotional Campaign Advisory Council is created within DACS<sup>30</sup> to review and make recommendations to the Commissioner of Agriculture regarding the Florida Agricultural Promotion Campaign.<sup>31</sup> The council does not appear to be active as the last noticed meeting was in 2013.

### ***Healthy Schools for Healthy Lives Council***

The Healthy Schools for Healthy Lives Council is created within DACS to advise the department on matters relating to nutritional standards and the prevention of childhood obesity, nutrition education, anaphylaxis, and other needs to further the development of the various school nutrition programs.<sup>32</sup> The council does not appear to be active.

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<sup>25</sup> Section 409.997(2), F.S.

<sup>26</sup> Section 409.997(3), F.S.

<sup>27</sup> Section 411.226(1), F.S.

<sup>28</sup> Section 411.226(2), F.S.

<sup>29</sup> Section 430.05, F.S.

<sup>30</sup> Section 571.28(1), F.S.

<sup>31</sup> Section 571.28, F.S.

<sup>32</sup> Section 595.701(1), F.S.

### ***Tropical Fruit Advisory Council***

Current law creates the Tropical Fruit Advisory Council within DACS to provide necessary assistance, review, and recommendations to the Commissioner of Agriculture for drafting a South Florida Tropical Fruit Plan.<sup>33</sup> However, the council does not appear to be active.

### ***Advisory Board, Preeminent State Research University Institute for Online Learning***

Current law establishes a collaborative partnership between the Board of Governors (BOG) and the Legislature to elevate the academic and research preeminence of Florida's highest-performing state research universities. The partnership stems from the State University System Governance Agreement executed on March 24, 2010, wherein the Governor and leaders of the Legislature agreed to a framework for the collaborative exercise of their joint authority and shared responsibility for the State University System.<sup>34</sup>

The preeminent state research universities program requires each state research university that meets all 12 academic and research excellence standards, as verified by the BOG, to establish an institute for online learning.

In 2013, the BOG was required to convene an advisory body to support the development of high-quality, fully online baccalaureate degree programs; advise the BOG on the release of funding to the university; and monitor, evaluate, and report on the implementation of the plan to the BOG, the Governor, the President of the Senate, and the Speaker of the House of Representatives.<sup>35</sup> The advisory board for the preeminent state research university institute for online learning has completed its statutory duties.

### ***Florida Early Learning Advisory Council***

The Florida Early Learning Advisory Council was created within the Agency for Workforce Innovation in 2004<sup>36</sup> and was moved within the Office of Early Learning in 2011.<sup>37</sup> The Office of Early Learning provides staff and administrative support for the council.<sup>38</sup>

The Florida Early Learning Advisory Council is tasked with periodically analyzing and providing recommendations to the Office of Early Learning on the effective and efficient use of local, state, and federal funds; the content of professional development training programs; and best practices for the development and implementation of early learning coalition plans.<sup>39</sup> However, the advisory council does not appear to be active.

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<sup>33</sup> Section 603.203, F.S.

<sup>34</sup> Section 1001.7065(1), F.S.

<sup>35</sup> Section 1001.7065(4), F.S.

<sup>36</sup> Section 1, ch. 2004-484, Laws of Fla.; codified at section 1002.77, F.S.

<sup>37</sup> Section 457, ch. 2011-142, Laws of Fla.

<sup>38</sup> Section 1002.77(5), F.S.

<sup>39</sup> Section 1002.77, F.S.

### III. Effect of Proposed Changes:

**Section 1** repeals chapters 2003-287 and 2006-43, L.O.F., relating to the membership, powers, and duties of the Citrus/Hernando Waterways Restoration Council.

**Section 2** repeals s. 215.5586(4), F.S., relating to the advisory council for the My Safe Florida Home Program.

**Section 3** amends s. 267.0731, F.S., to delete a requirement that the Division of Historical Resources of the Department of State convene an ad hoc committee to make recommendations for the Great Floridians Program.

**Section 4** repeals s. 373.4597(3), F.S., relating to implementation of recommendations of the Geneva Freshwater Lens Task Force.

**Section 5** repeals s. 376.86, F.S., to abolish the Brownfield Areas Loan Guarantee Council.

**Section 6** repeals s. 378.032(3), F.S., to delete a definition referring to the Nonmandatory Land Reclamation Committee, which is abolished in section 10 of the bill.

**Section 7** repeals s. 378.033, F.S., to abolish the Nonmandatory Land Reclamation Committee.

**Section 8** amends s. 378.034, F.S., to modify the procedures governing reclamation program applications to conform to the abolition of the Nonmandatory Land Reclamation Committee by shifting duties of the committee to the either the Secretary of the Department of Environmental Protection or the department staff.

**Section 9** repeals s. 379.2524, F.S., to abolish to the Sturgeon Production Working Group.

**Section 10** amends s. 379.361, F.S., to delete cross-references to conform to the abolition of the Sturgeon Production Working Group.

**Section 11** amends s. 379.367, F.S., to conform a cross-reference.

**Section 12** repeals s. 379.3671(4), F.S., to abolish the Trap Certificate Technical Advisory and Appeals Board.

**Section 13** repeals s. 403.42, F.S., to abolish the Clean Fuel Florida Advisory Board.

**Section 14** repeals s. 403.87, F.S., to abolish the technical advisory council for water and domestic wastewater operator certification.

**Section 15** repeals s. 408.910(11)(h), F.S., to delete statutory authority granted to the Florida Health Choices, Inc., to appoint technical advisory panels.

**Section 16** repeals s. 409.997(3), F.S., to delete statutory authority granted to the Department of Children and Families to establish a technical advisory panel relating to the results-oriented accountability program.

**Section 17** repeals s. 411.226, F.S., to delete the statutorily-defined goals of the Learning Gateway, to abolish the Learning Gateway steering committee, and to delete the statutory authority for the steering committee to approve demonstration projects.

**Section 18** repeals s. 430.05, F.S., to abolish the Department of Elderly Affairs Advisory Council.

**Section 19** repeals s. 571.24(7), F.S., to delete a duty of DACS relating to the Florida Agricultural Promotional Campaign Advisory Council, which is abolished by section 20 of this bill.

**Section 20** repeals s. 571.28, F.S., to abolish the Florida Agricultural Promotional Campaign Advisory Council.

**Section 21** repeals s. 595.701, F.S., to abolish the Healthy Schools for Healthy Lives Council.

**Section 22** repeals s. 603.203, F.S., to abolish the Tropical Fruit Advisory Council.

**Section 23** amends s. 603.204, F.S., to delete a reference to the Tropical Fruit Advisory Council, which is abolished by section 22 of the bill.

**Section 24** repeals s. 1001.7065(4)(a)–(f), F.S., to delete statutory authority granted to the Board of Governors to convene an advisory board relating to online baccalaureate degree programs.

**Section 25** repeals s. 1002.77, F.S., to abolish the Florida Early Learning Advisory Council.

**Section 26** amends s. 1002.83, F.S., to delete a reference to the Early Learning Advisory Council, which is abolished by section 25 of the bill.

**Section 27** provides the bill takes effect July 1, 2020.

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

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

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

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

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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: 215.5586, 267.0731, 373.4597, 378.032, 378.034, 379.361, 379.367, 379.3671, 408.910, 409.997, 571.24, 603.204, 1001.7065, and 1002.83.

This bill repeals the following sections of the Florida Statutes: 376.86, 378.033, 379.2524, 403.42, 403.87, 411.226, 430.05, 571.28, 595.701, 603.203, and 1002.77.

This bill repeals the following chapters of the Laws of Florida: 2003-287 and 2006-43.

**IX. Additional Information:**

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

**CS by Governmental Oversight and Accountability on February 10, 2020:**  
The CS deletes language abolishing the Florida Film and Entertainment Advisory Council and the Florida Young Farmer and Rancher Advisory Council.

- B. **Amendments:**

None.

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

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1 A bill to be entitled  
2 An act relating to the repeal of advisory bodies and  
3 councils; repealing chapters 2003-287 and 2006-43,  
4 Laws of Florida, relating to the membership, powers,  
5 and duties of the Citrus/Hernando Waterways  
6 Restoration Council; repealing s. 215.5586(4), F.S.,  
7 relating to the advisory council for the My Safe  
8 Florida Home Program; amending s. 267.0731, F.S.;  
9 removing the requirement that the Division of  
10 Historical Resources of the Department of State  
11 annually convene an ad hoc committee for purposes of  
12 administering the Great Floridians program; repealing  
13 s. 373.4597(3), F.S., relating to the Geneva  
14 Freshwater Lens Task Force; repealing s. 376.86, F.S.,  
15 relating to the Brownfield Areas Loan Guarantee  
16 Council; repealing s. 378.032(3), F.S., relating to  
17 definitions; deleting a definition to conform to  
18 changes made by the act; repealing s. 378.033, F.S.,  
19 relating to the Nonmandatory Land Reclamation  
20 Committee; amending s. 378.034, F.S.; modifying  
21 procedures governing reclamation program applications  
22 to conform to the repeal of the Nonmandatory Land  
23 Reclamation Committee; repealing s. 379.2524, F.S.,  
24 relating to the Sturgeon Production Working Group;  
25 amending s. 379.361, F.S.; deleting cross-references  
26 to conform to changes made by the act; amending s.  
27 379.367, F.S.; conforming a cross-reference to changes  
28 made by the act; repealing s. 379.3671(4), F.S.,  
29 relating to the Trap Certificate Technical Advisory

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30 and Appeals Board; repealing s. 403.42, F.S., relating  
31 to the Clean Fuel Florida Advisory Board; repealing s.  
32 403.87, F.S., relating to the technical advisory  
33 council for water and domestic wastewater operator  
34 certification; repealing s. 408.910(11)(h), F.S.,  
35 relating to technical advisory panels of Florida  
36 Health Choices, Inc.; repealing s. 409.997(3), F.S.,  
37 relating to the child welfare results-oriented  
38 accountability program technical advisory panel;  
39 repealing s. 411.226, F.S., relating to the Learning  
40 Gateway; repealing s. 430.05, F.S., relating to the  
41 Department of Elderly Affairs Advisory Council;  
42 repealing s. 571.24(7), F.S., relating to duties of  
43 the Department of Agriculture and Consumer Services;  
44 repealing s. 571.28, F.S., relating to the Florida  
45 Agricultural Promotional Campaign Advisory Council;  
46 repealing s. 595.701, F.S., relating to the Healthy  
47 Schools for Healthy Lives Council; repealing s.  
48 603.203, F.S., relating to the Tropical Fruit Advisory  
49 Council; amending s. 603.204, F.S.; conforming a  
50 provision to changes made by the act; repealing s.  
51 1001.7065(4)(a)-(f), F.S., relating to the advisory  
52 board on online learning for preeminent state research  
53 universities; repealing s. 1002.77, F.S., relating to  
54 the Florida Early Learning Advisory Council; amending  
55 s. 1002.83, F.S.; conforming a provision to changes  
56 made by the act; providing an effective date.

57  
58 Be It Enacted by the Legislature of the State of Florida:

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59 Section 1. Chapters 2003-287 and 2006-43, Laws of Florida,  
60 are repealed.

61 Section 2. Subsection (4) of section 215.5586, Florida  
62 Statutes, is repealed.

63 Section 3. Subsection (1) of section 267.0731, Florida  
64 Statutes, is amended to read:

65 267.0731 Great Floridians Program.—The division shall  
66 establish and administer a program, to be entitled the Great  
67 Floridians Program, which shall be designed to recognize and  
68 record the achievements of Floridians, living and deceased, who  
69 have made major contributions to the progress and welfare of  
70 this state.

71 (1) (a) The division shall nominate present or former  
72 citizens of this state, living or deceased, who during their  
73 lives have made major contributions to the progress of the  
74 nation or this state and its citizens. Nominations shall be  
75 submitted to the Secretary of State who shall select from those  
76 nominated not less than two persons each year who shall be  
77 honored with the designation "Great Floridian," provided no  
78 person whose contributions have been through elected or  
79 appointed public service shall be selected while holding any  
80 such office.

81 (b) ~~(a)~~ To enhance public participation and involvement in  
82 the identification of any person worthy of being nominated as a  
83 Great Floridian, the division shall seek advice and assistance  
84 from persons qualified through the demonstration of special  
85 interest, experience, or education in the dissemination of  
86 knowledge about the state's history.  
87

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88 ~~(b) Annually, the division shall convene an ad hoc~~  
89 ~~committee composed of representatives of the Governor, each~~  
90 ~~member of the Florida Cabinet, the President of the Senate, the~~  
91 ~~Speaker of the House of Representatives, and the Secretary of~~  
92 ~~State. This committee shall meet at least twice. The committee~~  
93 ~~shall nominate not fewer than two persons whose names shall be~~  
94 ~~submitted to the Secretary of State with the recommendation that~~  
95 ~~they be honored with the designation "Great Floridian."~~

96 Section 4. Subsection (3) of section 373.4597, Florida  
97 Statutes, is repealed.

98 Section 5. Section 376.86, Florida Statutes, is repealed.

99 Section 6. Subsection (3) of section 378.032, Florida  
100 Statutes, is repealed.

101 Section 7. Section 378.033, Florida Statutes, is repealed.

102 Section 8. Subsections (5), (6), (7), (9), and (10) of  
103 section 378.034, Florida Statutes, are amended to read:

104 378.034 Submission of a reclamation program request;  
105 procedures.—

106 (5) (a) The department staff shall, by February 1 of each  
107 year, present to the secretary committee for his or her ~~its~~  
108 consideration those reclamation program applications received by  
109 the preceding November 1.

110 (b) The department staff shall recommend an order of  
111 priority for the reclamation program applications that is  
112 consistent with subsection (6).

113 (c) The recommendation of the department staff shall  
114 include an estimate of the cost of each reclamation program or  
115 land acquisition.

116 ~~(6) The committee shall recommend approval, modification,~~

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117 ~~or denial of the reclamation program applications, associated~~  
 118 ~~cost estimates, and the department staff's recommended~~  
 119 ~~prioritized list.~~ Recommendations on the order of priority shall  
 120 be based, among other criteria, on the following criteria;  
 121 however, department staff ~~the committee~~ may give greater weight  
 122 to one or more of the criteria depending on the overall needs of  
 123 the nonmandatory land reclamation program:

124 (a) Whether health and safety hazards exist; and, if so,  
 125 such hazards shall be given the greatest weight;

126 (b) Whether the economic or environmental utility or the  
 127 aesthetic value of the land will return naturally within a  
 128 reasonable period of time;

129 (c) Whether there is a reasonable geographic and applicant  
 130 diversity in light of previously awarded reclamation contracts,  
 131 reclamation program applications before the committee, and the  
 132 remaining eligible lands;

133 (d) Whether reclamation is in the public interest;

134 (e) Whether the land has been naturally reclaimed or is  
 135 eligible for acquisition by the state for hunting, fishing, or  
 136 other outdoor recreation purposes or for wildlife preservation;

137 (f) Whether the land is to be reclaimed for agricultural  
 138 use and the applicant has agreed to maintain the land in  
 139 agricultural use for at least 5 years after the completion of  
 140 the reclamation;

141 (g) Whether the program, alone or in conjunction with other  
 142 reclamation programs, will provide a substantial regional  
 143 benefit;

144 (h) Whether the program, alone or in conjunction with other  
 145 reclamation programs, will benefit regional drainage patterns;

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146 (i) Whether the land is publicly owned and will be  
 147 reclaimed for public purposes;

148 (j) Whether the program includes a donation or agreement to  
 149 sell a portion of the program application area to the state for  
 150 outdoor recreational or wildlife habitat protection purposes;

151 (k) Whether the program is cost-effective in achieving the  
 152 goals of the nonmandatory land reclamation program; and

153 (l) Whether the program will reclaim lands described in  
 154 subsection (2).

155 (7) The prioritized list developed by department staff  
 156 ~~approved by the committee~~ may contain more reclamation program  
 157 applications than there are funds available during the year.

158 (9) ~~The committee recommendations shall be submitted to the~~  
 159 ~~secretary by April 1 of each year for final agency action~~ By  
 160 June 1 of each ~~that~~ year, the secretary shall approve, in whole  
 161 or in part, the list of reclamation program applications in the  
 162 order of priority in which the applications are presented by  
 163 department staff.

164 (10) Any approved reclamation program application that was  
 165 not funded shall, at the request of the applicant, be considered  
 166 by department staff ~~the committee at its next meeting called for~~  
 167 ~~that purpose~~, together with other reclamation program  
 168 applications received by November 1 of the next year.

169 Section 9. Section 379.2524, Florida Statutes, is repealed.

170 Section 10. Paragraph (b) of subsection (4) of section  
 171 379.361, Florida Statutes, is amended to read:

172 379.361 Licenses.—

173 (4) SPECIAL ACTIVITY LICENSES.—

174 (b) The Fish and Wildlife Conservation Commission is

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175 authorized to issue special activity licenses in accordance with  
 176 this section ~~and s. 379.2524~~, to permit the importation and  
 177 possession of wild anadromous sturgeon. The commission is also  
 178 authorized to issue special activity licenses, in accordance  
 179 with this section ~~and s. 379.2524~~, to permit the importation,  
 180 possession, and aquaculture of native and nonnative anadromous  
 181 sturgeon until best management practices are implemented for the  
 182 cultivation of anadromous sturgeon pursuant to s. 597.004. The  
 183 special activity license shall provide for specific management  
 184 practices to protect native populations of saltwater species.

185 Section 11. Paragraph (b) of subsection (2) of section  
 186 379.367, Florida Statutes, is amended to read:

187 379.367 Spiny lobster; regulation.—

188 (2)

189 (b) Twenty-five dollars of the \$125 fee for a spiny lobster  
 190 endorsement required under subparagraph (a)1. must be used only  
 191 for trap retrieval as provided in s. 379.2424. The remainder of  
 192 the fees collected under paragraph (a) shall be deposited as  
 193 follows:

194 1. Fifty percent of the fees collected shall be deposited  
 195 in the Marine Resources Conservation Trust Fund for use in  
 196 enforcing the provisions of paragraph (a) through aerial and  
 197 other surveillance and trap retrieval.

198 2. Fifty percent of the fees collected shall be deposited  
 199 as provided in s. 379.3671(4) ~~s. 379.3671(5)~~.

200 Section 12. Subsection (4) of section 379.3671, Florida  
 201 Statutes, is repealed.

202 Section 13. Section 403.42, Florida Statutes, is repealed.

203 Section 14. Section 403.87, Florida Statutes, is repealed.

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204 Section 15. Paragraph (h) of subsection (11) of section  
 205 408.910, Florida Statutes, is repealed.

206 Section 16. Subsection (3) of section 409.997, Florida  
 207 Statutes, is repealed.

208 Section 17. Section 411.226, Florida Statutes, is repealed.

209 Section 18. Section 430.05, Florida Statutes, is repealed.

210 Section 19. Subsection (7) of section 571.24, Florida  
 211 Statutes, is repealed.

212 Section 20. Section 571.28, Florida Statutes, is repealed.

213 Section 21. Section 595.701, Florida Statutes, is repealed.

214 Section 22. Section 603.203, Florida Statutes, is repealed.

215 Section 23. Section 603.204, Florida Statutes, is amended  
 216 to read:

217 603.204 South Florida Tropical Fruit Plan.—The Commissioner  
 218 of Agriculture, ~~in consultation with the Tropical Fruit Advisory~~  
 219 ~~Council~~, shall develop and update a South Florida Tropical Fruit  
 220 Plan, which shall identify problems and constraints of the  
 221 tropical fruit industry, propose possible solutions to such  
 222 problems, and develop planning mechanisms for orderly growth of  
 223 the industry, including:

224 (1) Criteria for tropical fruit research, service, and  
 225 management priorities.

226 (2) Proposed legislation that may be required.

227 (3) Plans relating to other tropical fruit programs and  
 228 related disciplines in the State University System.

229 (4) Potential tropical fruit products in terms of market  
 230 and needs for development.

231 (5) Evaluation of production and fresh fruit policy  
 232 alternatives, including, but not limited to, setting minimum

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233 grades and standards, promotion and advertising, development of  
234 production and marketing strategies, and setting minimum  
235 standards on types and quality of nursery plants.

236 (6) Evaluation of policy alternatives for processed  
237 tropical fruit products, including, but not limited to, setting  
238 minimum quality standards and development of production and  
239 marketing strategies.

240 (7) Research and service priorities for further development  
241 of the tropical fruit industry.

242 (8) Identification of state agencies and public and private  
243 institutions concerned with research, education, extension,  
244 services, planning, promotion, and marketing functions related  
245 to tropical fruit development, and delineation of contributions  
246 and responsibilities. The recommendations in the plan relating  
247 to education or research shall be submitted to the Institute of  
248 Food and Agricultural Sciences.

249 (9) Business planning, investment potential, financial  
250 risks, and economics of production and use.

251 Section 24. Paragraphs (a), (b), (c), (d), (e), and (f) of  
252 subsection (4) of section 1001.7065, Florida Statutes, are  
253 repealed.

254 Section 25. Section 1002.77, Florida Statutes, is repealed.

255 Section 26. Subsection (11) of section 1002.83, Florida  
256 Statutes, is amended to read:

257 1002.83 Early learning coalitions.—

258 (11) Each early learning coalition shall establish terms  
259 for all appointed members of the coalition. The terms must be  
260 staggered and must be a uniform length that does not exceed 4  
261 years per term. Coalition chairs shall be appointed for 4 years

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262 ~~in conjunction with their membership on the Early Learning~~  
263 ~~Advisory Council~~ pursuant to s. 20.052. Appointed members may  
264 serve a maximum of two consecutive terms. When a vacancy occurs  
265 in an appointed position, the coalition must advertise the  
266 vacancy.

267 Section 27. This act shall take effect July 1, 2020.

# THE FLORIDA SENATE

COMMITTEES:  
Ethics and Elections, *Chair*  
Appropriations Subcommittee on Education  
Education  
Finance and Tax  
Health Policy  
Judiciary

JOINT COMMITTEE:  
Joint Legislative Auditing Committee

## SENATOR DENNIS BAXLEY

12th District

February 18, 2020

The Honorable Chair Lizbeth Benacquisto  
400 Senate Office Building  
Tallahassee, Florida 32399

Dear Chair Benacquisto,

I would like to request that CS/SB 1636 Repeal of Advisory Boards and Councils in the next Rules Committee meeting.

Under Florida law a "committee" or "task force" is an advisory body created by the Legislature without specific statutory enactment, for a time not to exceed one year in duration, or created by specific statutory enactment, for a time not to exceed three years. Generally, a committee or task force is appointed to study a specific problem and recommend a solution or policy alternative addressing the problem, and upon completion of that mission, the committee terminates. The legislature must terminate advisory boards that are no longer necessary and beneficial to the furtherance of a public purpose.

This bill repeals advisory bodies and programs that have been deemed inactive or unnecessary and are therefore no longer necessary and beneficial to the furtherance of a public purpose.

Thank you for your favorable consideration.

Onward & Upward,



Senator Dennis K. Baxley  
Senate District 12

DKB/dd

cc: John Phelps, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012  
Email: [baxley.dennis@flsenate.gov](mailto:baxley.dennis@flsenate.gov)

Bill Galvano  
President of the Senate

David Simmons  
President Pro Tempore

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 422

INTRODUCER: Innovation, Industry, and Technology Committee; Infrastructure and Security Committee; and Senator Perry

SUBJECT: Recreational Vehicle Industries

DATE: February 24, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Fav/CS</u>
2.	<u>Baird</u>	<u>Imhof</u>	<u>IT</u>	<u>Fav/CS</u>
3.	<u>Proctor</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 422:

The bill amends provisions of chs. 513 and 527, F.S., which governs mobile home parks, lodging parks, recreational vehicle parks, and recreational camps. The bill:

- Specifies that permitting and regulatory authority (for sanitary standards and operational matters) is preempted exclusively to the Department of Health (DOH) for recreational vehicle (RV) parks, mobile home parks, lodging parks, and recreational camps.
- Requires new park or camp owners to apply to DOH for a permit within 60 days after the date of transfer, instead of before the date of transfer.
- Allows an RV park damaged or destroyed by natural disaster to be rebuilt on the same site using the same density standards established at the time of the RV park's initial approval.
- Creates a rebuttable presumption that an RV park guest is a transient guest.
- Provides a method for the disposal of property left by a transient guest with outstanding account who vacates an RV park without notice.
- Adds a violation of posted RV park rules and regulations to the list of reasons a RV park operator may eject a transient guest or visitor from the RV park premises and provides notice of ejection requirements.
- Allows a RV park operator to refuse a transient guest or visitor access to the premises for specified conduct.
- Provides that a RV park operator may request that such person leave the premises immediately for specified conduct.

- Modifies existing duties of a law enforcement officer to allow them to remove from the premise any guest who, according to RV park operator, has violated RV park rules.
- Defines “recreational vehicle” (RV) to mean a motor vehicle that is designed to provide temporary living quarters for recreational, camping, or travel use and that has its own propulsion or is mounted on or towed by another motor vehicle;
- Requires the Department of Agriculture and Consumer Services (DACS) by rule to specify the requirements for agents qualified to administer the written competency examinations required for qualifiers and master qualifiers;
- Requires the DACS to establish by rule a separate written competency examination for persons applying for a license to solely engage in the service and repair of RVs;
- Provides that any qualifier or master qualifier who has passed the category I RV dealer and installer examination may engage in category I activities solely related to the service and repair of RVs; and
- Requires that, in order to apply for certification as a master qualifier, each applicant must meet certain experience or certification criteria, and employment and examination requirements.

The effective date of the bill is July 1, 2020.

## II. Present Situation:

### Mobile Home and Recreational Vehicle Parks

Florida first began regulating recreational parks and camps in 1927 when the Legislature enacted statutes addressing the operation and maintenance of “tourist camps.” These establishments catered to transient guests by providing tent and cottage accommodations.<sup>1</sup> The substance of these original regulations is currently embodied in ch. 513, F.S. This chapter provides the regulatory requirements governing mobile home parks, lodging parks, recreational vehicle (RV) parks, and recreational camps in the state. Chapter 513, F.S., also contains standards and requirements for operators of these types of recreational facilities.

Chapter 513, F.S., has not undergone major changes since the 1993 regular session.<sup>2</sup> Applicable rules adopted by the DOH have not been modified since 1996.<sup>3</sup>

Mobile home parks, lodging parks, RV parks, and recreational camps are similar to hotels in many respects. Like hotels, these parks and camps offer lodging accommodations to the public. Recreational park operators own the accommodations or a portion thereof and allow transient guests to purchase a revocable license to enter and remain on the property. The real difference between hotels and recreational parks are the nature of the facilities provided.

As of July 19, 2019, there were 5,392 licensed mobile home parks, lodging parks, RV parks, and recreational camps in Florida.<sup>4</sup> In a June 2019 report, RVs Move America found that RV

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<sup>1</sup> Chapter 12419, Laws of Fla. (1927)

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

<sup>3</sup> Fla. Admin. Code R. 64E-15 (1996).

<sup>4</sup> Florida Department of Health, *Mobile Home Parks* (last modified September 13, 2019), available at <http://www.floridahealth.gov/environmental-health/mobile-home-parks/index.html> (last visited Feb. 18, 2020).

campgrounds and travel had a \$1.1 billion annual economic impact in Florida, which was the third-highest in the nation.<sup>5</sup>

### ***Applicability of Recreational Vehicle Park Provisions to Mobile Home Parks***

Although mobile home parks are primarily regulated by ch. 723, F.S., a mobile home park that has five or more sites set aside for rent to transient RV guests must comply with the RV park requirements in ch. 513, F.S. Notwithstanding this requirement, mobile home parks licensed under ch. 723, F.S., are not required to obtain a second operational license under ch. 513, F.S.<sup>6</sup>

### ***Department of Health Oversight***

The DOH is the exclusive regulatory and permitting authority for sanitary standards in all mobile home parks, lodging parks, recreational vehicle parks, and recreational camps. The DOH also issues operational permits, provides and enforces administrative rules, performs routine premises inspections, prosecutes regulatory violations, and issues penalties for operator misconduct. Local governments are prohibited from enacting regulations for sanitary standards within a ch. 513, F.S., park or camp.<sup>7</sup>

### ***Permitting***

All parks and camps must apply for and receive an operating permit from the DOH to conduct business activities. Permits are not transferable from one place or person to another and must be renewed annually.<sup>8</sup> The DOH may revoke or suspend a permit if a park or camp is not constructed or maintained according to law and DOH rule. When the ownership of a park or camp is transferred, and the new owner plans to continue recreational operations, the new owner must apply to the DOH for a permit before the date of transfer.<sup>9</sup>

The DOH may charge park and camp operators reasonable permitting fees, and such fees must be based on the actual costs incurred by the DOH in carrying out oversight of the particular facility

### ***Placement of Recreational Vehicles on Lots in Permitted Parks***

Under s. 513.1115, F.S., the separation distances between RV sites within an RV park must remain unchanged from the time the DOH initially approves a park's operational permit. Likewise, setback distances from the exterior park property boundary must be the setback distances established at the time of the initial approval of the park by the DOH and the local government.<sup>10</sup>

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<sup>5</sup> RVs Move America, *Florida* (June 2019), available at <https://rvia.guerrillaeconomics.net/reports/e5b85c91-4f88-460c-9912-579c89f8d04e>? (last visited Feb. 18, 2020)

<sup>6</sup> Section 513.014, F.S.

<sup>7</sup> Section 513.051, F.S.

<sup>8</sup> Section 513.02, F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 513.1115(2), F.S.

### ***Guest Register***

Every park and camp operator that rents to transient guests<sup>11</sup> must maintain a current and signed registry of guests that occupy rental sites. The register must show the dates upon which the rental sites were occupied by such guests and the rates charged for the guests' occupancy. This register must be maintained in chronological order and be available for inspection by the DOH at any time. An operator is not required to retain a register that is more than two years old.<sup>12</sup>

### ***Unclaimed Guest Property***

If a guest leaves property in a park and the property has an identifiable owner, the park operator may obtain ownership of the property by providing the guest written notice of the property and holding the property for 90 days without it being reclaimed. Alternatively, if the property belongs to a guest who has vacated the premises without notice to the operator and has an outstanding account with the park, the operator may obtain ownership of the property through the court and a writ of distress.<sup>13</sup>

### ***Park Rules and Guest Conduct on Premises***

Park and camp operators may establish reasonable rules and regulations for the management of the park, its guests, and employees. Under s. 513.117, F.S., such park and camp rules are deemed a special contract between operators, guests, and employees. Park rules may control the liabilities, responsibilities, and obligations of all parties, and must be posted (along with the provisions of ch. 513, F.S.) in the registration area of the park or camp.<sup>14</sup> The operator of a park or camp may refuse accommodations or service to any person: whose conduct on the premises of the park displays intoxication, profanity, lewdness, or brawling; who indulges in such language or conduct as to disturb the peace or comfort of other guests; who engages in illegal or disorderly conduct; or whose conduct constitutes a nuisance.<sup>15</sup>

### ***Guest Eviction***

Park and camp operators may remove transient guests for certain violations of park rules and general law. A transient guest may be removed for illegal possession of a controlled substance, disturbing the peace and comfort of other persons, causing harm to the physical park, and failing to make payment of rent.<sup>16</sup>

To remove a guest, the operator of a park must notify the guest in writing that the park no longer desires to entertain the guest and request that such guest should immediately leave the park or camp. If the guest has paid in advance, the park must provide the guest with the unused portion of the payment with the written notification. If a guest remains in a park or camp after being requested to leave, the guest is considered guilty of a misdemeanor of the second degree,

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<sup>11</sup> "Transient guest means any guest registered as provided in s. 513.112, F.S., for 6 months or less. When a guest is permitted with the knowledge of the park operator to continuously occupy a recreational vehicle in a recreational vehicle park for more than 6 months, there is a rebuttable presumption that the occupancy is nontransient, and the eviction procedures of part II of chapter 83 apply." Section 513.01(12), F.S.

<sup>12</sup> Section 513.112, F.S.

<sup>13</sup> Section 513.115, F.S.; *see also* s. 513.151, F.S.

<sup>14</sup> Section 513.117, F.S.

<sup>15</sup> Section 513.118, F.S.

<sup>16</sup> Section 513.13, F.S.

punishable as provided in ss. 775.082 or 775.083, F.S. (Conviction of a misdemeanor in the second degree is not to exceed a \$500 criminal fine and a term of imprisonment not to exceed 60 days.)<sup>17</sup>

In the event a guest owes a park operator an amount equivalent to three nights' rent, the operator may disconnect all utilities to the recreational vehicle or campsite and provide the guest written demand for the amount owed. The operator must reconnect the utilities of the recreational vehicle if the guest agrees to satisfy the debt.<sup>18</sup>

If any person is illegally on the premises of a park or camp, the operator may call a law enforcement officer for assistance. A law enforcement officer, upon the request of an operator, must arrest and take into custody any guest who violates park rules, conduct requirements, or general law in the presence of the officer. A law enforcement officer may also serve an arrest warrant on any guest or person and take the person into custody. Upon arrest, with or without a warrant, the guest is deemed to have given up any right to occupancy of the park or camp premises. However, the operator of the park must refund the guest any unused payments and use all reasonable and proper means to care for personal property left on the premises by the guest.<sup>19</sup>

In addition to the grounds for eviction established by law, the operator may establish grounds for eviction in any written lease agreement with a guest.<sup>20</sup>

### ***Other Rights, Requirements, and Remedies for Operators; Writ of Distress***

In addition to the rights and remedies described above, ch. 513, F.S., includes other procedures park and camp operators must follow when recovering a rental premise and removing or obtaining ownership of guest property to satisfy an outstanding debt. These procedures require park and camp operators to follow a civil procedure in court. Procedures include, but are not limited to:

- Sealing a recreational vehicle in the presence of at least one other person who is not an agent of the operator;
- Preparing an itemized inventory of any property belonging to the guest in the presence of a person who is not an agent;
- Petitioning a court for a writ of distress predicated on a lien created under s. 713.77, F.S., addressing property claims by third persons; and
- Storing property until a settlement or a final court judgment is obtained on the guest's outstanding account.<sup>21</sup>

### **Liquefied Petroleum Gas**

The Bureau of Compliance within the DACS is the primary agency charged with regulating the LP gas industry, including licensing, inspection, training, and examination requirements, in accordance with ch. 527, F.S. These responsibilities enable DACS to ensure that those persons

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<sup>17</sup> *Id.* at (2)

<sup>18</sup> *Id.* at (3)

<sup>19</sup> *Id.* at (4)

<sup>20</sup> *Id.* at (5)

<sup>21</sup> Section 513.151, F.S.

engaged in LP gas-related business activities in this state are trained and that compliance with acceptable safety codes and standards is achieved statewide.<sup>22</sup>

LP gas is defined in statute as any material composed predominantly of any of the following hydrocarbons, or mixtures of the same: propane; propylene; butanes (normal butane or isobutane); and butylenes.<sup>23</sup>

Propane, the most widely used LP gas, is an energy source for hotels, restaurants, schools, hospitals, nursing homes, universities, private homes, recreational vehicles, agricultural and industrial facilities, and is used as an alternative fuel for vehicles.<sup>24</sup>

***Business Licenses***

Current law provides licensing requirements for businesses that engage in certain LP gas-related activities, including sales, installations, service and repair work, manufacture of equipment, and other miscellaneous activities. The DACS is required to license applicants that it determines to be competent, qualified, and trustworthy. Violations for willfully operating without a license is a third degree felony.<sup>25</sup> The license categories and associated fees are as follows:<sup>26</sup>

<b><i>License Categories</i></b>	<b><i>License Fee Per Year</i></b>
Category I LP gas dealer	\$400
Category II LP gas dispenser	\$400
Category III LP gas cylinder exchange unit operator	\$65
Category IV dealer in appliances and equipment	\$65
Category V LP gas installer	\$200
Category VI miscellaneous operator	\$200

Licenses may elect to renew their license annually, biennially, or triennially, and are required to meet the same requirements and conditions, including fee amounts, for each licensed year. An expired license will become inoperative, and the fee for restoration of an expired license is equal to the original license fee, and must be paid before the licensee is allowed to resume operations.<sup>27</sup>

<sup>22</sup> Florida Department of Agriculture and Consumer Services, *Safe Dispensing of Propane, Propane Dispensing Unit Operator Training Manual*, <https://www.fdacs.gov/content/download/78592/file/Safe-Dispensing-of-Propane-Manual.pdf> (last visited Feb. 18, 2020).

<sup>23</sup> Section 527.01(1), F.S.

<sup>24</sup> Florida Department of Agriculture and Consumer Services, *supra* note 1, at 4.

<sup>25</sup> Section 527.02(1), F.S. A third degree felony is punishable by a term of imprisonment not exceeding 15 years and a fine not to exceed \$5,000. *See* ss. 775.082 and 775.083, F.S.

<sup>26</sup> Section 527.02(2), F.S.

<sup>27</sup> Section 527.03, F.S.

### ***Training and Examinations***

DACS is responsible for enforcing reasonable standards of competency, including, but not limited to, the training, licensure, testing, and qualifying of persons participating in the LP gas industry.<sup>28</sup> DACS is also authorized to adopt rules that are:<sup>29</sup>

- In the interest of public health, safety, and welfare and to promote the safe handling of LP gas, equipment, and systems; and
- Reasonably necessary to assure the competence of persons to safely engage in the business of LP gas.

According to the DACS's website, training is required for all employees of an LP gas-related business, and refresher training must be conducted at three-year intervals.<sup>30</sup>

In addition, any person applying for a license to engage in category I (LP gas dealer), II (LP gas dispenser), or V (LP gas installer) activities must prove competency by passing a written examination administered by DACS or its agent.<sup>31</sup>

The DACS does not currently have a rule that provides for a separate written competency examination process for licensees engaged in RV-related LP gas services or repairs that would be different than that taken by other types of applicants in a license category.

### ***Qualifiers***

Each category I (LP gas dealer), II (LP gas dispenser), or V (LP gas installer) licensee is required to employ a full-time employee who has received a qualifier certificate from the DACS. Qualifiers are required to function in a supervisory capacity, and a separate qualifier must be present for every ten employees.

An applicant for a qualifier certificate must:

- Be employed by a category I (LP gas dealer), II (LP gas dispenser), or V (LP gas installer) licensee;
- Submit to the DACS a nonrefundable \$20 examination fee; and
- Pass a competency examination with a grade of 70 percent or above in each area tested.

Qualifier registration expires three years after the date of issuance. Qualifiers must renew their qualification 30 calendar days before expiration, upon:

- Application to the DACS;
- Payment of a \$20 renewal fee; and
- Documentation of the completion of a minimum of 16 hours of approved continuing education courses, as defined by rule of the DACS, during the previous three-year period.

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<sup>28</sup> Section 527.055(1)(b), F.S.

<sup>29</sup> Section 527.06, F.S.

<sup>30</sup> Florida Department of Agriculture and Consumer Services, *LP Gas Training*, <https://www.fdacs.gov/Business-Services/LP-Gas-Inspection/LP-Gas-Training> (last visited Feb. 18, 2020).

<sup>31</sup> Section 527.0201(1), F.S.

Persons failing to renew before the expiration date must reapply and take a qualifier competency examination in order to reestablish qualifier status.<sup>32</sup>

### ***Master Qualifiers***

In addition to the qualifier requirements, each category I (LP gas dealer) and V (LP gas installer) licensee is required to have a manager, owner, or employee at each licensed location who has received a master qualifier certificate from the DACS. The master qualifier must be a manager, owner or someone otherwise primarily responsible for overseeing the operations of the licensed location and must provide documentation to the DACS.

An applicant for a master qualifier certificate must:<sup>33</sup>

- Be employed by a category I (LP gas dealer) or V (LP gas installer) licensee;
- Submit to the DACS a nonrefundable \$30 examination fee.
- Have been a registered qualifier for at least three years immediately preceding the application; and
- Pass a master qualifier competency examination with a grade of 70 percent or above in each area tested.

Master qualifier registration expires three years after the date of issuance. Master qualifier registration renewals may be renewed by submitting to DACS.<sup>34</sup>

- Proof of employment;
- Payment of a \$30 certificate renewal fee; and
- Documentation of the completion of a minimum of 16 hours of approved continuing education courses, as defined by department rule, during the previous three-year period.

### ***Recreational Vehicle Dealers or installers***

Propane is widely used in RVs to regulate temperature, cook meals, provide hot water, and refrigerate food. Typically, motorized RVs have a fixed propane tank and towable RVs have a removable propane tank.<sup>35</sup> In Florida, the refilling, repairing, or replacing of propane gas and equipment must be completed by a properly trained employee of a licensed LP gas-related business.<sup>36</sup>

Prior to July 2018, RV dealers and installers were classified separately in Florida law as a “category IV LP gas dispenser and recreational vehicle servicer,” and were defined as:<sup>37</sup>

“any person engaging in the business of operating a liquefied petroleum gas dispensing unit for the purpose of serving liquid product to the ultimate consumer for industrial, commercial, or domestic use, and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, and

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<sup>32</sup> Section 527.0201(1)-(4), F.S.

<sup>33</sup> Section 527.0201(5), F.S.

<sup>34</sup> Section 527.0201(5)(c), F.S.

<sup>35</sup> Winnebagolife, *An Easy Guide to Finding Propane for Your RV*, <https://winnebagolife.com/2019/05/finding-propane-for-your-rv> (last visited Feb. 18, 2020).

<sup>36</sup> See ch. 527, F.S.

<sup>37</sup> See s. 527.01(9), F.S. (2017).

whose services include the installation, service, or repair of recreational vehicle liquefied petroleum gas appliances and equipment.”

RVs were defined as:<sup>38</sup>

“a motor vehicle designed to provide temporary living quarters for recreational, camping, or travel use, which has its own propulsion or is mounted on or towed by another motor vehicle.”

In order to engage in LP gas-related activities, category IV (LP gas dispenser and recreational vehicle servicer) businesses were required to obtain licensure from DACS by meeting all applicable requirements within the chapter of law governing the LP gas industry, including training, examination, initial and renewal license fees, insurance coverage, and qualifiers.<sup>39</sup>

However, legislation passed during the 2018 Legislative Session, effective July 2018, resulted in the category IV (LP gas dispenser and recreational vehicle servicer) license type being deleted from statute.<sup>40</sup>

Since July 2018, depending on the type of work being performed, a RV dealer/installer is now required to obtain either a category I (LP gas dealer), II (LP gas dispenser), or V (LP gas installer) license, and meet all applicable licensing and examination requirements in order to operate lawfully in the state. Current law does not provide a separate LP gas license category specifically for RV dealers and installers.

According to the DACS, RV dealers and installers are required to obtain a category V (LP gas installer) license, and if the RV dealer/installer also dispenses LP gas, a category II (LP gas dispenser) license must also be obtained. In lieu of multiple licenses, RV dealers and installers may obtain a category I (LP gas dealer) license that allows them to perform both service and dispensing functions.<sup>41</sup>

According to the DACS, there are 50 licensed RV dealers and installers in the state.<sup>42</sup>

### III. Effect of Proposed Changes:

#### Mobile Home and Recreational Vehicle Parks

**Sections 1 and 3** amend ss. 513.012 and 513.051, F.S., respectively, to clarify that the DOH is the exclusive regulatory and permitting authority for sanitary standards and operational matters in all mobile home parks, lodging parks, recreational vehicle parks, and recreational camps.

Section 1 of the bill also expands the scope of the DOH’s regulatory permitting and operational matters to specifically protect the health and well-being of Florida residents and visitors.

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<sup>38</sup> Section 527.01(7), F.S. (2017).

<sup>39</sup> See ch. 527, F.S. (2017).

<sup>40</sup> Ch. 2018-84, Laws of Fla.

<sup>41</sup> *Supra* note 1, p. 1.

<sup>42</sup> *Supra* note 1, p. 3.

**Section 2** amends s. 513.02, F.S., to provide park and camp purchasers 60 days to apply for an operational permit from the DOH after the ownership interest in a park is transferred. (Under current law, a park operator must apply to the DOH *before* the date of transfer.)

**Section 4** amends s. 513.112, F.S., to provide a rebuttable presumption that a guest who occupies an RV in a park for less than six months, as evidenced by the length of stay shown in the guest registry, is a transient occupant. This change establishes the right of operators to eject transient guests and helps avoid property interest considerations in landlord-tenant law.<sup>43</sup>

**Section 5** amends s. 513.1115, F.S., to allow RV parks to use the same density standards originally permitted by the DOH and local government when rebuilding a site after it was damaged or destroyed by wind, water, or natural disasters. The bill also states that the initial density standards and setback distances permitted by the DOH and local government will supersede any subsequent local government law or regulation on lot size, lot density, lot separation, or setback distance.

**Section 6** amends s. 513.115, F.S., to categorize property left by a guest with an outstanding account with the operator as abandoned property. The disposition of this abandoned property will be governed by the requirements specified in the Personal Property Landlord and Tenant Act under s. 715.10 or s. 705.185, F.S., as applicable.

**Section 7** amends s. 513.118, F.S., to broaden the ability of park and camp operators to deny transient guests and visitors access to the park premises. The bill allows operators to remove guests and visitors for conduct that disturbs the quiet enjoyment of other guests, or conduct that constitutes a safety hazard. Guests and visitors who do not leave park premises commit the offense of trespass as provided in s. 810.08, F.S.<sup>44</sup> The bill authorizes operators to rely on a law enforcement officer to supervise guest removal. The bill provides that a removed guest, accompanied by a law enforcement officer, may return to park premises to reclaim left personal property within 48 hours of removal.

**Section 8** amends s. 513.13, F.S., to add disturbing quiet enjoyment and a violation of posted park rules as causes for removal of park guests. The bill provides standardized language, mirroring s. 509.141, F.S.,<sup>45</sup> that park operators may use to request a guest to leave park premises. If a guest committed a removable offense according to a park operator and remains on park premises after receiving the notice, the bill requires a law enforcement officer to remove the guest from the premises. The bill allows removed guests to recollect personal property from the park within 48 hours. The bill changes eviction<sup>46</sup> terminology to ejection,<sup>47</sup> clarifying that an

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<sup>43</sup> Compare s. 509.141, F.S. (public lodging--refusal of admission and ejection of undesirable guests; notice; procedure; penalties for refusal to leave), with s. 83.20, F.S. (rental housing--causes for removal of tenants), and s. 513.13, F.S. (recreational vehicle parks--eviction; grounds; proceedings).

<sup>44</sup> Criminal trespass in a structure or conveyance is a misdemeanor of the second degree. See s. 810.08(2)(a), F.S.

<sup>45</sup> Relating to refusal of admission and ejection of undesirable guests in public lodging establishments.

<sup>46</sup> Eviction is defined as dispossession by process of law; the act of depriving a person of the possession of land or rental property he has held or leased. See Black's Law Dictionary 555 (6th ed. 1991).

<sup>47</sup> Ejection is defined as a turning out of possession. Ejectment is an action to restore possession of property to the person entitled to it. See Black Law Dictionary 516 (6th ed. 1991).

operator may remove a transient guest without the process of law. This ejection process will be similar to guest removal in hotels, motels, and lodging establishments.<sup>48</sup>

### **Liquefied Petroleum Gas**

**Section 9** amends s. 527.01, F.S., to define an RV to mean a motor vehicle that is designed to provide temporary living quarters for recreational, camping, or travel use and that has its own propulsion or is mounted on or towed by another motor vehicle.

**Section 10** amends s. 527.0201, F.S., to:

- Require the DACS by rule to specify the requirements for agents qualified to administer the written competency examinations required for qualifiers and master qualifiers;
- Require the DACS to establish by rule a separate written competency examination for persons applying for a license to solely engage in the service and repair of RVs, which must include and ensure competency in the following activities as they relate to recreational vehicles:
  - Operating an LP gas dispensing unit to serve liquid product to a consumer for industrial, commercial, or domestic use;
  - Selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of LP gas; and
  - Installing, servicing, or repairing LP gas for RV appliances and equipment.
- Allow any qualifier or master qualifier who has passed the category I RV dealer and installer examination to engage in category I (LP gas dealer) activities solely related to the service and repair of RVs; and
- Require that, in order to apply for certification as a master qualifier, each applicant must:
  - Have a minimum of 3 years of verifiable LP gas experience or hold a professional certification by an LP gas manufacturer as adopted by DACS rule immediately preceding submission of the application;
  - Must be employed by a licensed category I (LP gas dealer) or category V (LP gas installer) licensee or an applicant for such license; and
  - Must pass a master qualifier competency examination administered by the DACS or its agent.

**Section 11** provides that the bill takes effect on July 1, 2020.

## **IV. Constitutional Issues:**

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

None.

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

None.

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<sup>48</sup> *Supra* note 44.

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 prevents a local government from utilizing land use regulations to restrict the occupancy of a park beyond the provisions of an initial permit issued by the DOH and a local government.

C. Government Sector Impact:

The bill may cause an indeterminate, negative fiscal impact on the local governments. The bill requires state and local law enforcement officers to be more involved in the removal of guests. This involvement may cause state and local law enforcement offices to incur additional costs.

**VI. Technical Deficiencies:**

Section 6 cross references the Personal Property Landlord and Tenant Act under s. 715.10, F.S. This section only references the short title for the act. The entire act is ss. 715.10 – 715.111, F.S.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 513.012, 513.02, 513.051, 513.112, 513.1115, 513.115, 513.118, 513.13, 527.01, and 527.0201.

**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 Innovation, Industry, and Technology on February 17, 2020:**

- Specifies that permitting and regulatory authority (for sanitary standards and operational matters) is preempted exclusively to the Department of Health (DOH) for recreational vehicle (RV) parks, mobile home parks, lodging parks, and recreational camps.
- Requires new park or camp owners to apply to DOH for a permit within 60 days after the date of transfer, instead of before the date of transfer.
- Allows an RV park damaged or destroyed by natural disaster to be rebuilt on the same site using the same density standards established at the time of the RV park's initial approval.
- Creates a rebuttable presumption that an RV park guest is a transient guest.
- Provides a method for the disposal of property left by a transient guest with outstanding account who vacates an RV park without notice.
- Adds a violation of posted RV park rules and regulations to the list of reasons a RV park operator may eject a transient guest or visitor from the RV park premises and provides notice of ejection requirements.
- Allows a RV park operator to refuse a transient guest or visitor access to the premises for specified conduct.
- Provides that a RV park operator may request that such person leave the premises immediately for specified conduct.
- Modifies existing duties of a law enforcement officer to allow them to remove from the premise any guest who, according to RV park operator, has violated RV park rules.

**CS by Infrastructure and Security on January 27, 2020:**

- Requires the DACS by rule to specify the requirements for agents qualified to administer the written competency examinations required for qualifiers and master qualifiers;
- Requires the DACS to establish by rule a separate written competency examination for persons applying for a license to solely engage in the service and repair of RVs;
- Provides that any qualifier or master qualifier who has passed the category I RV dealer and installer examination may engage in category I activities solely related to the service and repair of RVs; and
- Requires that in order to apply for certification as a master qualifier, each applicant must meet certain experience or certification criteria, and employment and examination requirements.

B. Amendments:

None.

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

---

By the Committees on Innovation, Industry, and Technology; and  
Infrastructure and Security; and Senator Perry

580-03751-20

2020422c2

1 A bill to be entitled  
2 An act relating to recreational vehicle industries;  
3 amending s. 513.012, F.S.; revising legislative  
4 intent; amending s. 513.02, F.S.; providing a  
5 timeframe for the application of a permit; amending s.  
6 513.051, F.S.; preempting to the Department of Health  
7 the regulatory authority for permitting standards;  
8 amending s. 513.112, F.S.; providing that evidence of  
9 a certain length of stay in a guest register creates a  
10 rebuttable presumption that a guest is transient;  
11 amending s. 513.1115, F.S.; providing standards for a  
12 damaged or destroyed recreational vehicle park to be  
13 rebuilt under certain circumstances; superseding  
14 certain ordinances or regulations; amending s.  
15 513.115, F.S.; specifying when certain property  
16 becomes abandoned; providing for disposition of such  
17 property; amending s. 513.118, F.S.; authorizing a  
18 park operator to refuse access to the premises and to  
19 eject transient guests or visitors based on specified  
20 conduct; providing that a person who refuses to leave  
21 the park premises commits the offense of trespass;  
22 providing immunity from liability for certain law  
23 enforcement officers; providing an exception;  
24 providing for removal of property; amending s. 513.13,  
25 F.S.; providing for ejection from a park and  
26 specifying grounds and requirements therefor;  
27 providing for removal of property; amending s. 527.01,  
28 F.S.; defining the term "recreational vehicle";  
29 amending s. 527.0201, F.S.; requiring the Department

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30 of Agriculture and Consumer Services to adopt rules  
31 specifying requirements for agents to administer  
32 certain competency examinations and establishing a  
33 written competency examination for a license to engage  
34 in activities solely related to the service and repair  
35 of recreational vehicles; authorizing certain  
36 qualifiers and master qualifiers to engage in  
37 activities solely related to the service and repair of  
38 recreational vehicles; requiring verifiable LP gas  
39 experience or professional certification by an LP gas  
40 manufacturer in order to apply for certification as a  
41 master qualifier; providing an effective date.  
42  
43 Be It Enacted by the Legislature of the State of Florida:  
44  
45 Section 1. Section 513.012, Florida Statutes, is amended to  
46 read:  
47 513.012 Public health laws; enforcement.—It is the intent  
48 of the Legislature that mobile home parks, lodging parks,  
49 recreational vehicle parks, and recreational camps be  
50 exclusively regulated under this chapter. As such, the  
51 department shall administer and enforce, with respect to such  
52 parks and camps, laws and rules relating to sanitation, control  
53 of communicable diseases, illnesses and hazards to health among  
54 humans and from animals to humans, and permitting and  
55 operational matters in order to protect the general health and  
56 well-being of the residents ~~people~~ of and visitors to the state.  
57 However, nothing in this chapter qualifies a mobile home park, a  
58 lodging park, a recreational vehicle park, or a recreational

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59 camp for a liquor license issued under s. 561.20(2)(a)1. Mobile  
60 home parks, lodging parks, recreational vehicle parks, and  
61 recreational camps regulated under this chapter are exempt from  
62 regulation under the provisions of chapter 509.

63 Section 2. Subsection (5) of section 513.02, Florida  
64 Statutes, is amended to read:

65 513.02 Permit.—

66 (5) When a park or camp regulated under this chapter is  
67 sold or its ownership transferred, the transferee must apply for  
68 a permit to the department within 60 days after ~~before~~ the date  
69 of transfer. The applicant must provide the department with a  
70 copy of the recorded deed or lease agreement before the  
71 department may issue a permit to the applicant.

72 Section 3. Section 513.051, Florida Statutes, is amended to  
73 read:

74 513.051 Preemption.—The department is the exclusive  
75 regulatory and permitting authority for sanitary and permitting  
76 standards for all mobile home parks, lodging parks, recreational  
77 vehicle parks, and recreational camps in accordance with ~~the~~  
78 ~~provisions of~~ this chapter.

79 Section 4. Subsection (3) is added to section 513.112,  
80 Florida Statutes, to read:

81 513.112 Maintenance of guest register and copy of laws.—

82 (3) When a guest occupies a recreational vehicle in a  
83 recreational vehicle park for less than 6 months, as evidenced  
84 by the length of stay shown in the guest register, there is a  
85 rebuttable presumption that the occupancy is transient.

86 Section 5. Present subsection (3) of section 513.1115,  
87 Florida Statutes, is redesignated as subsection (4) and amended,

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88 and a new subsection (3) is added to that section, to read:

89 513.1115 Placement of recreational vehicles on lots in  
90 permitted parks.—

91 (3) If a recreational vehicle park is damaged or destroyed  
92 as a result of wind, water, or other natural disaster, the park  
93 may be rebuilt on the same site using the same density standards  
94 that were approved and permitted before the park was damaged or  
95 destroyed.

96 ~~(4)(3)~~ This section does not limit the regulation of the  
97 uniform firesafety standards established under s. 633.206.  
98 However, this section shall supersede any other county,  
99 municipality, or special district ordinance or regulation  
100 regarding the lot size, lot density, or separation or setback  
101 distance of a recreational vehicle park which goes into effect  
102 after the initial permitting and construction of the park.

103 Section 6. Section 513.115, Florida Statutes, is amended to  
104 read:

105 513.115 Unclaimed property.—Any property having an  
106 identifiable owner which ~~is left in a recreational vehicle park~~  
107 ~~by a guest, other than property belonging to a guest who has~~  
108 ~~vacated the premises without notice to the operator and with an~~  
109 ~~outstanding account, which property~~ remains unclaimed after  
110 having been held by a the park for 90 days after written notice  
111 was provided to the guest or the owner of the property, ~~becomes~~  
112 the property of the park. Any property that is left by a guest  
113 who has vacated the premises without notice to the operator and  
114 who has an outstanding account is considered abandoned property,  
115 and disposition thereof shall be governed by the Disposition of  
116 Personal Property Landlord and Tenant Act under s. 715.10 or

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117 under s. 705.185, as applicable.

118 Section 7. Section 513.118, Florida Statutes, is amended to  
119 read:

120 513.118 Conduct on premises; refusal of service.—

121 (1) The operator of a recreational vehicle park may refuse  
122 to provide accommodations, ~~or~~ service, or access to the premises  
123 to any transient guest or visitor ~~person~~ whose conduct on the  
124 premises of the park displays intoxication, profanity, lewdness,  
125 or brawling; who indulges in such language or conduct as to  
126 disturb the peace, quiet enjoyment, or comfort of other guests;  
127 who engages in illegal or disorderly conduct; or whose conduct  
128 constitutes a nuisance or safety hazard.

129 (2) The operator of a recreational vehicle park may request  
130 that a transient guest or visitor who violates subsection (1)  
131 leave the premises immediately. A person who refuses to leave  
132 the premises commits the offense of trespass as provided in s.  
133 810.08 and the operator may call a law enforcement officer to  
134 have the person and his or her property removed under the  
135 supervision of the officer. A law enforcement officer is not  
136 liable for any claim involving the removal of the person or  
137 property from the recreational vehicle park under this section,  
138 except as provided in s. 768.28. If conditions do not allow for  
139 immediate removal of the person's property, he or she may  
140 arrange a reasonable time, not to exceed 48 hours, with the  
141 operator to come remove the property, accompanied by a law  
142 enforcement officer.

143 (3) Such refusal of accommodations, ~~or~~ service, or access  
144 to the premises may ~~shall~~ not be based upon race, color,  
145 national origin, sex, physical disability, or creed.

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146 Section 8. Section 513.13, Florida Statutes, is amended to  
147 read:

148 513.13 Recreational vehicle parks; ~~ejection~~ eviction;  
149 grounds; proceedings.—

150 (1) The operator of any recreational vehicle park may  
151 remove or cause to be removed from such park, in the manner  
152 provided in this section, any transient guest of the park who,  
153 while on the premises of the park, illegally possesses or deals  
154 in a controlled substance as defined in chapter 893; who ~~or~~  
155 disturbs the peace, quiet enjoyment, and comfort of other  
156 persons; who causes harm to the physical park; who violates the  
157 posted park rules and regulations; or who fails to make payment  
158 of rent at the rental rate agreed upon and by the time agreed  
159 upon. The admission of a person to, or the removal of a person  
160 from, any recreational vehicle park may ~~shall~~ not be based upon  
161 race, color, national origin, sex, physical disability, or  
162 creed.

163 (2) The operator of any recreational vehicle park shall  
164 notify such guest that the park no longer desires to entertain  
165 the guest and shall request that such guest immediately depart  
166 from the park. Such notice shall be given in writing, as  
167 follows: "You are hereby notified that this recreational vehicle  
168 park no longer desires to entertain you as its guest, and you  
169 are requested to leave at once. To remain after receipt of this  
170 notice is a misdemeanor under the laws of this state." If such  
171 guest has paid in advance, the park shall, at the time such  
172 notice is given, tender to the guest the unused portion of the  
173 advance payment. Any guest who remains or attempts to remain in  
174 such park after being requested to leave commits is guilty of a

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175 misdemeanor of the second degree, punishable as provided in s.  
176 775.082 or s. 775.083.

177 (3) If a guest has accumulated an outstanding account in  
178 excess of an amount equivalent to 3 ~~three~~ nights' rent at a  
179 recreational vehicle park, the operator may disconnect all  
180 utilities of the recreational vehicle and notify the guest that  
181 the action is for the purpose of requiring the guest to confront  
182 the operator or permittee and arrange for the payment of the  
183 guest's account. Such arrangement must be in writing, and a copy  
184 shall be furnished to the guest. Upon entering into such  
185 agreement, the operator shall reconnect the utilities of the  
186 recreational vehicle.

187 (4) If any person is illegally on the premises of any  
188 recreational vehicle park, the operator of such park may call  
189 upon any law enforcement officer of this state for assistance.  
190 It is the duty of such law enforcement officer, upon the request  
191 of such operator, to remove from the premises or place under  
192 arrest and take into custody for violation of this section any  
193 guest who, according to the park operator, violated ~~violates~~  
194 subsection (1) or subsection (2) ~~in the presence of the officer.~~  
195 If a warrant has been issued by the proper judicial officer for  
196 the arrest of any guest who violates ~~violator of~~ subsection (1)  
197 or subsection (2), the officer shall serve the warrant, arrest  
198 the guest person, and take the guest person into custody. Upon  
199 removal or arrest, with or without warrant, the guest is deemed  
200 to have abandoned or given up any right to occupancy ~~or to have~~  
201 ~~abandoned the guest's right to occupancy~~ of the premises of the  
202 recreational vehicle park; and the operator of the park shall  
203 employ all reasonable and proper means to care for any personal

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204 property left on the premises by such guest and shall refund any  
205 unused portion of moneys paid by such guest for the occupancy of  
206 such premises. If conditions do not allow for immediate removal  
207 of the guest's property, he or she may arrange a reasonable  
208 time, not to exceed 48 hours, with the operator to come remove  
209 the property, accompanied by a law enforcement officer.

210 (5) In addition to the grounds for ~~ejection~~ eviction  
211 established by law, grounds for ~~ejection~~ eviction may be  
212 established in a written lease agreement between a recreational  
213 vehicle park operator or permittee and a recreational vehicle  
214 park occupant.

215 Section 9. Subsection (18) is added to section 527.01,  
216 Florida Statutes, to read:

217 527.01 Definitions.—As used in this chapter:

218 (18) "Recreational vehicle" means a motor vehicle that is  
219 designed to provide temporary living quarters for recreational,  
220 camping, or travel use and that has its own propulsion or is  
221 mounted on or towed by another motor vehicle.

222 Section 10. Subsection (1) and paragraph (a) of subsection  
223 (5) of section 527.0201, Florida Statutes, are amended to read:

224 527.0201 Qualifiers; master qualifiers; examinations.—

225 (1) In addition to the requirements of s. 527.02, a any  
226 person applying for a license to engage in category I, category  
227 II, or category V activities must prove competency by passing a  
228 written examination administered by the department or its agent  
229 with a grade of 70 percent or above in each area tested. Each  
230 applicant for examination shall submit a \$20 nonrefundable fee.

231 (a) The department shall by rule specify the general areas  
232 of competency to be covered by each examination and the relative

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233 weight to be assigned in grading each area tested.

234 (b) The department shall by rule specify the requirements  
 235 for agents qualified to administer the written competency  
 236 examinations required by this part.

237 (c) The department shall by rule establish a separate  
 238 written competency examination for persons applying for a  
 239 license to engage in category I activities solely related to the  
 240 service and repair of recreational vehicles. The category I  
 241 recreational vehicle dealer/installer examination shall include  
 242 and ensure competency in the following activities as they relate  
 243 to recreational vehicles:

244 1. Operating a liquefied petroleum gas dispensing unit to  
 245 serve liquid product to a consumer for industrial, commercial,  
 246 or domestic use;

247 2. Selling or offering to sell, or leasing or offering to  
 248 lease, apparatus, appliances, and equipment for the use of  
 249 liquefied petroleum gas; and

250 3. Installing, servicing, or repairing recreational vehicle  
 251 liquefied petroleum gas appliances and equipment.

252 (d) Any qualifier or master qualifier who has passed the  
 253 category I recreational vehicle dealer/installer examination may  
 254 engage in category I activities solely related to the service  
 255 and repair of recreational vehicles.

256 (5) In addition to all other licensing requirements, each  
 257 category I and category V licensee must, at the time of  
 258 application for licensure, identify to the department one master  
 259 qualifier who is a full-time employee at the licensed location.  
 260 This person shall be a manager, owner, or otherwise primarily  
 261 responsible for overseeing the operations of the licensed

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262 location and must provide documentation to the department as  
 263 provided by rule. The master qualifier requirement shall be in  
 264 addition to the requirements of subsection (1).

265 (a) In order to apply for certification as a master  
 266 qualifier, each applicant must have ~~been a registered qualifier~~  
 267 ~~for~~ a minimum of 3 years of verifiable LP gas experience or hold  
 268 a professional certification by an LP gas manufacturer as  
 269 adopted by department rule immediately preceding submission of  
 270 the application, must be employed by a licensed category I or  
 271 category V licensee, or an applicant for such license, and must  
 272 pass a master qualifier competency examination administered by  
 273 the department or its agent. Master qualifier examinations shall  
 274 be based on Florida's laws, rules, and adopted codes governing  
 275 liquefied petroleum gas safety, general industry safety  
 276 standards, and administrative procedures. The applicant must  
 277 successfully pass the examination with a grade of 70 percent or  
 278 above. Each applicant for master qualifier registration must  
 279 submit to the department a nonrefundable \$30 examination fee  
 280 before the examination.

281 Section 11. This act shall take effect July 1, 2020.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 20, 2020

---

I respectfully request that **Senate Bill #422**, relating to Recreational Vehicles, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry".

---

Senator Keith Perry  
Florida Senate, District 8

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/20

*Meeting Date*

422

*Bill Number (if applicable)*

Topic \_\_\_\_\_

*Amendment Barcode (if applicable)*

Name Dale Calhoun

Job Title Executive Director

Address PO Box 11026

Phone 8506810496

*Street*

Tallahassee

FL

32302

Email dale@floridagas.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Propane Gas Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/20  
Meeting Date

422  
Bill Number (if applicable)

Topic Recreational Vehicle Industries

Amendment Barcode (if applicable)

Name Marc Dunbar

Job Title \_\_\_\_\_

Address 215 S Monroe St Ste 815

Phone \_\_\_\_\_

Street

Tall

City

FL

State

Zip

Email mdunbar@deanmead.com

Speaking:  For  Against  Information

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

Representing FL Assoc. of RV Parks + Campgrounds + FL Recreational Vehicle Trade Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: CS/SB 814

INTRODUCER: Ethics and Elections Committee and Senator Perry

SUBJECT: Disposition of Surplus Funds by Candidates

DATE: February 24, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Roberts</u>	<u>EE</u>	<b>Fav/CS</b>
2.	<u>Hackett</u>	<u>McVane</u>	<u>GO</u>	<b>Favorable</b>
3.	<u>Fox</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 814 prohibits a candidate from being employed by the charitable organization to which he or she donates surplus funds following an election. Current law provides that a candidate failing to dispose of campaign funds to a charity in the manner prescribed by statute commits a first-degree misdemeanor.

The bill also allows any candidate to remit surplus campaign funds either to the state General Revenue Fund or to any local political subdivision's general revenue fund of the candidate's choice; currently, state candidates only have the option to give to the *State* general revenue fund, and local candidates to their local political subdivision's general revenue fund.

The bill takes effect July 1, 2020.

**II. Present Situation:**

A candidate who withdraws his or her candidacy, becomes unopposed, or is eliminated or elected to office must dispose of surplus funds in his or her campaign account within 90 days and file a termination report reflecting the disposition of all remaining funds.<sup>1</sup> Florida law provides former candidates with seven non-exclusive options for disposing of surplus funds:<sup>2</sup>

---

<sup>1</sup> Section 106.141, F.S.

<sup>2</sup> Sections 106.11(5) and 106.141(4)(a), F.S. Successful candidates have the additional option to transfer a certain amount of the surplus funds to an "office account," to be used for "legitimate expenses in connection with the candidate's public office."

- Return funds *pro rata* to contributors;
- Give the funds as a charitable donation;
- Rebate up to \$25,000 to the candidate’s political party;
- Deposit funds to the General Revenue Fund of State (*state candidates*) or to the local political subdivision for the office the candidate is seeking to represent (*local candidates*);
- Purchase “thank you” advertising for up to 75 days;
- Pay for items obligated before the candidate withdrew, became unopposed, or was eliminated or elected; and,
- Pay for necessary expenses to close down the campaign office and prepare final reports.

The statutory language for the charitable donation option authorizes candidates to:

Donate the funds that have not been spent or obligated to a charitable organization or organizations that meet the requirements of s. 501(c)(3) of the Internal Revenue Code.<sup>3</sup>

Thus, the only limitation is that funds must be given to a 501(c)(3) organization(s).

Any candidate who fails to dispose of campaign funds to a charity in the manner provided by statute commits a first-degree misdemeanor.<sup>4</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 106.141, F.S; provides that, for charitable donations involving surplus campaign funds, the candidate may not be employed by the charitable organization to which he or she donates the funds; candidates who violate this new restriction commit a first-degree misdemeanor.

The bill also allows *any* candidate to remit surplus funds *either* to the State general revenue fund or to *any* local political subdivision’s general revenue fund; currently, state candidates only have the option to give to the *State* general revenue fund, and local candidates to the political subdivision’s general revenue fund for which they are seeking office.

**Section 2** provides that the bill takes effect July 1, 2020.

### IV. Constitutional Issues:

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

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

---

Section 106.141(5), F.S. Candidates receiving public campaign financing must return *all* excess funds to the State General Revenue Fund after paying for any items for which the campaign was liable before withdrawing, becoming unopposed, or being eliminated or elected. Section 106.141(4)(b), F.S.

<sup>3</sup> Section 106.141(4)(a)2., F.S.

<sup>4</sup> Section 106.141(11), F.S.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill could result in additions to state and/or local political subdivision general revenue funds that can now receive surplus campaign funds from *any* state or local candidate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 106.141, 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 Ethics and Elections on February 3, 2020:**

The CS expands the options for disposing of surplus campaign funds by allowing any candidate to remit funds either to the State general revenue fund or to any local political subdivision’s general revenue fund.

- B. **Amendments:**

None.

By the Committee on Ethics and Elections; and Senator Perry

582-03039-20

2020814c1

1 A bill to be entitled  
 2 An act relating to the disposition of surplus funds by  
 3 candidates; amending s. 106.141, F.S.; prohibiting a  
 4 candidate from donating surplus funds to a charitable  
 5 organization that employs the candidate; authorizing  
 6 any candidate to give certain surplus funds to the  
 7 state or a political subdivision to be disbursed in a  
 8 specified manner; providing an effective date.  
 9  
 10 Be It Enacted by the Legislature of the State of Florida:  
 11  
 12 Section 1. Paragraph (a) of subsection (4) of section  
 13 106.141, Florida Statutes, is amended to read:  
 14 106.141 Disposition of surplus funds by candidates.—  
 15 (4)(a) Except as provided in paragraph (b), any candidate  
 16 required to dispose of funds pursuant to this section shall, at  
 17 the option of the candidate, dispose of such funds by any of the  
 18 following means, or any combination thereof:  
 19 1. Return pro rata to each contributor the funds that have  
 20 not been spent or obligated.  
 21 2. Donate the funds that have not been spent or obligated  
 22 to a charitable organization or organizations that meet the  
 23 qualifications of s. 501(c)(3) of the Internal Revenue Code,  
 24 except that the candidate may not be employed by the charitable  
 25 organization to which he or she donates the funds.  
 26 3. Give not more than \$25,000 of the funds that have not  
 27 been spent or obligated to the affiliated party committee or  
 28 political party of which such candidate is a member.  
 29 4. Give the funds that have not been spent or obligated:

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582-03039-20

2020814c1

30 a. ~~In the case of a candidate for state office,~~ To the  
 31 state, to be deposited in either the Election Campaign Financing  
 32 Trust Fund or the General Revenue Fund, as designated by the  
 33 candidate; or  
 34 b. ~~In the case of a candidate for an office of a political~~  
 35 ~~subdivision,~~ To a such political subdivision, to be deposited in  
 36 the general fund thereof.  
 37 Section 2. This act shall take effect July 1, 2020.

Page 2 of 2

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 18, 2020

---

I respectfully request that **Senate Bill #814**, relating to Disposition of Surplus Campaign Funds, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style and is positioned above a horizontal line.

Senator Keith Perry  
Florida Senate, District 8

THE FLORIDA SENATE

APPEARANCE RECORD

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

26 Feb 2020

Meeting Date

814

Bill Number (if applicable)

Topic Disposition of Surplus Funds

Amendment Barcode (if applicable)

Name Melina Rayna Svanhild Farley Barratt

Job Title Self

Address 9689 SE 69 Ter

Phone 352-226-7477

Trenton FL 32693

Email

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Self

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-26-2020

Meeting Date

814

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name David Ash

Job Title \_\_\_\_\_

Address PO Box 11201

Phone 850-251-0985

Street

Tallahassee

FL

32302

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

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

Representing Common Cause FL

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: CS/CS/SB 1696

INTRODUCER: Rules Committee; Education Committee; and Senator Perry and others

SUBJECT: Student Athletes

DATE: February 26, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dew	Sikes	ED	<b>Fav/CS</b>
2.	Delia	Hendon	CF	<b>Favorable</b>
3.	Dew	Phelps	RC	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 1696 establishes the “Zachary Martin Act” and adds requirements to protect students’ health while participating in extracurricular activities and athletics. Specifically, the bill requires:

- Each Florida High School Athletic Association (FHSAA) member public school to make an automated external defibrillator (AED) available in a clearly marked and publicized location for each athletic contest, practice, workout, or conditioning session.
- A school employee or volunteer with current training in cardiopulmonary resuscitation and use of an AED, beginning June 1, 2021, to be present at each athletic event, practice, workout, or conditioning session during and outside of the school year.
- All employees or volunteers expected to use an AED to complete the training and be notified annually of the location of each AED on school grounds.
- The FHSAA to make training and resources related to monitoring heat stress available to each member school.
- Each school’s emergency action plan to include a procedure for onsite cooling using cold-water immersion.
- Athletic coaches and sponsors of outdoor extracurricular activities to complete annual exertional heat illness training, including administration of cooling zones.
- Students involved in interscholastic athletics to pass a medical evaluation prior to participating in relevant activities outside of the school year.

The bill has an indeterminate fiscal impact on FHSAA member schools and takes effect July 1, 2020.

## II. Present Situation:

### Exertional Heat Stroke

Exertional heat stroke (EHS), the most severe form of heat illness,<sup>1</sup> is associated with sustained high body temperature resulting from dehydration, strenuous exercise, and environmental heat exposure.<sup>2</sup> If not promptly recognized and treated, EHS can progress to multi-organ system failure and death.<sup>3</sup> EHS remains one of the leading causes of sudden death in athletics<sup>4</sup> despite evidence showing a 100 percent survival rate when an athlete is cooled down to an appropriate core body temperature within the first 10 minutes of collapsing.<sup>5</sup> Research shows that the best practice for rapid cooling treatment is cold water immersion, preferably in a cooling zone,<sup>6</sup> in a tub that is filled with water and ice to lower the athlete's core body temperature.<sup>7</sup> High school athletic associations in states such as Arkansas, Georgia, Hawaii, Idaho, Kentucky, Mississippi, New Jersey, North Carolina, Utah, and Vermont require schools to have cold water immersion tubs for onsite cooling for all practices that take place in warm weather.<sup>8</sup>

Since 1995, 64 football players have died nationally from EHS, 47 of which occurred at the high school level.<sup>9</sup> Ninety percent of recorded EHS deaths have occurred during practice.<sup>10</sup> From 2014-2018, there was an average of 2.2 EHS deaths per year associated with football.<sup>11</sup>

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<sup>1</sup> University of Connecticut, Korey Stringer Institute, *Heat Illnesses*, <https://ksi.uconn.edu/emergency-conditions/heat-illnesses/> (last visited February 14, 2020). Heat illnesses are a spectrum of illnesses that occur due to heat exposure. This heat exposure can come from either environmental heat (air temperature) or intense exercise. Such conditions include heat cramps, heat exhaustion, and heat syncope (orthostatic dizziness).

<sup>2</sup> Office of Program Policy Analysis and Government Accountability, *Prevention and Treatment of Exertional Heat Illness: Presentation to the House PreK-12 Innovation Subcommittee* (Oct. 23, 2019), (last visited February 14, 2020), available at [https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3017&Session=2020&DocumentType=Meeting Packets&FileName=pki\\_10-23-19.pdf](https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3017&Session=2020&DocumentType=Meeting%20Packets&FileName=pki_10-23-19.pdf) [hereinafter *OPPAGA Presentation*].

<sup>3</sup> *Id.*

<sup>4</sup> William M. Adams, *Exertional Heat Stroke within Secondary School Athletics*, Current Sports Medicine Reports (April 2019), American College of Sports Medicine, (last visited February 14, 2020), available at [https://journals.lww.com/acsm-csmr/Fulltext/2019/04000/Exertional\\_Heat\\_Stroke\\_within\\_Secondary\\_School.13.aspx#pdf-link](https://journals.lww.com/acsm-csmr/Fulltext/2019/04000/Exertional_Heat_Stroke_within_Secondary_School.13.aspx#pdf-link) [hereinafter *Exertional Heat Stroke within Secondary School Athletics*].

<sup>5</sup> *OPPAGA Presentation*, *supra* note 2, at 17.

<sup>6</sup> Florida High School Athletic Association, *Administrative Policies of the Florida High School Athletic Association* (April 29, 2019), at 107, (last visited February 14, 2020), available at [https://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1920\\_handbook\\_policies\\_website\\_116.pdf](https://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1920_handbook_policies_website_116.pdf) [hereinafter *Administrative Policies of the Florida High School Athletic Association*]. A cooling zone is an area identified for rest out of direct sunlight. It should include ice sponges and towels, cold water immersion tubs, tarps that can be filled with ice and wrapped around an athlete, and other cooling alternatives to facilitate the cooling process.

<sup>7</sup> *OPPAGA Presentation*, *supra* note 2, at 17; *Exertional Heat Stroke within Secondary School Athletics*, *supra* note 4.

<sup>8</sup> University of Connecticut, Korey Stringer Institute, *State High School Sports Safety Policies*, (last visited February 14, 2020), available at <https://ksi.uconn.edu/high-school-state-policies-2-2-2/> [hereinafter *State High School Sports Safety Policies*].

<sup>9</sup> National Center for Catastrophic Sports Injury Research, *Annual Survey of Football Injury Research 2018* (Feb. 15, 2019), (last visited February 14, 2020), available at <https://nccsir.unc.edu/files/2019/02/Annual-Football-2018-Fatalities-FINAL.pdf> [hereinafter *Annual Survey of Football Injury Research*].

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

Florida leads the nation in high school student athlete deaths from EHS, with four since 2011.<sup>12</sup> Over 460 student athletes were treated for exertional heat illness during the 2017-2018 school year.<sup>13</sup>

### **Environmental Monitoring and Hydration**

The National Federation of State High School Associations Sports Medicine Advisory Committee has published a position statement regarding best practices for maintaining hydration and minimizing risk for EHS.<sup>14</sup> These include drinking water regularly throughout all athletic activity and weighing athletes before and after hot weather athletic activities to assess the change in hydration status of each athlete.<sup>15</sup>

Adjusting and modifying athletic activity levels based on environmental conditions is a best practice for preventing EHS in athletes.<sup>16</sup> The FHSAA requires:<sup>17</sup>

- Member schools to follow a preseason acclimatization and recovery model for all sports;
- Individual schools or districts to select and promote a method of environmental monitoring for use outside the acclimatization period; and
- Staff to comply with standard recommendations for practice modifications.

### **Automated External Defibrillators (AEDs)**

Florida law requires each public school member of the FHSAA to have an operational automated external defibrillator (AED) on school grounds.<sup>18</sup> Each school must ensure that all employees or volunteers who are reasonably expected to use the device obtain appropriate training, including completion of a course in cardiopulmonary resuscitation (CPR) or a basic first aid course that includes CPR training, and demonstrated proficiency in the use of an AED.<sup>19</sup> The location of each AED must be registered with a local emergency medical services medical director.<sup>20</sup>

### **The Florida High School Athletic Association (FHSAA)**

The FHSAA is designated by Florida law as the governing nonprofit organization of athletics in Florida public schools.<sup>21</sup> The FHSAA is tasked with adopting bylaws that establish eligibility requirements for all students who participate in high school athletic competition in FHSAA

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<sup>12</sup> Laurence Reisman, *Heat-related football deaths: Florida high schools must do more, mourning Sebastian parents say*, TCPalm, Aug. 31, 2018, (last visited February 14, 2020), available at <https://www.tcpalm.com/story/opinion/columnists/laurence-reisman/2018/08/31/fhsaa-heat-stroke-preventable-shogran-sebastian-river-korey-stringer-riverdale-football-collapse/1136460002/>.

<sup>13</sup> *OPPAGA Presentation*, supra note 2, at 23.

<sup>14</sup> National Federation of State High School Associations Sports Medicine Advisory Committee, *Position Statement and Recommendations for Maintaining Hydration to Optimize Performance and Minimize the Risk for Exertional Heat Illness* (October 2018), available at <https://www.nfhs.org/media/1014751/nfhs-hydration-position-statement-final-april-2018.pdf>.

<sup>15</sup> *Id.*; *Annual Survey of Football Injury Research*, supra note 9, at 18.

<sup>16</sup> *Id.*; *Annual Survey of Football Injury Research*, supra note 9, at 17; *Exertional Heat Stroke within Secondary School Athletics*, supra note 4.

<sup>17</sup> *Administrative Policies of the Florida High School Athletic Association*, supra note 6, at 105 and 107.

<sup>18</sup> Section 1006.165, F.S.

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

<sup>20</sup> *Id.*

<sup>21</sup> Section 1006.20(1), F.S.

member schools.<sup>22</sup> The FHSAA requires all student athletes to satisfactorily pass a medical evaluation each year before participating in interscholastic athletic activity.<sup>23</sup>

The FHSAA does not require its member schools to have devices and equipment available to effectively respond to and prevent EHS in student athletes.<sup>24</sup> Current FHSAA policies also do not require member schools to:<sup>25</sup>

- Regulate summer athletic activity, with the exception of football;<sup>26</sup>
- Establish or adopt hydration guidelines;
- Have cooling zones with cold water immersion tubs or other cooling materials;
- Have an individual trained in CPR and AED present at athletic activities; or
- Ensure an AED is present at all athletic activities, preseason or regular.

### III. Effect of Proposed Changes:

**Section 1** authorizes the act to be cited as the “Zachary Martin Act.”

**Section 2** amends s. 1006.165, F.S., to require:

- Each Florida High School Athletic Association (FHSAA) member public school to make its automated external defibrillator (AED) available in a clearly marked and publicized location for each athletic contest, practice, workout, or conditioning session.
- A school employee or volunteer with current training in cardiopulmonary resuscitation and use of an AED, beginning June 1, 2021, to be present at each athletic event, practice, workout, or conditioning session during and outside of the school year.
- All employees or volunteers expected to use an AED to complete the training and be notified annually of the location of each AED on school grounds.
- The FHSAA to make training and resources to monitor heat stress available to each member school.
- Each school’s emergency action plan to include a procedure for onsite cooling using cold-water immersion.
- Athletic coaches and sponsors of outdoor extracurricular activities to complete annual exertional heat illness training, including administration of cooling zones.

The bill requires the FHSAA to put measures in place to protect student athletes year round.

These measures include:

- Making training and resources available to each member for the effective monitoring of heat stress.

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<sup>22</sup> Section 1006.20(2)(a), F.S.

<sup>23</sup> Section 1006.20(2)(c), F.S.

<sup>24</sup> *OPPAGA Presentation*, *supra* note 2, at 12.

<sup>25</sup> *Administrative Policies of the Florida High School Athletic Association*, *supra* note 6, at 105 and 107-108.

<sup>26</sup> See FHSAA, *Heat Acclimatization and Football Contact Procedures* (last visited February 14, 2020), available at [https://www.fhsaa.org/sites/default/files/orig\\_uploads/sports/football/archives/2018-19/heat\\_acclimatization\\_and\\_football\\_contact\\_procedures.pdf](https://www.fhsaa.org/sites/default/files/orig_uploads/sports/football/archives/2018-19/heat_acclimatization_and_football_contact_procedures.pdf). Recommendations are also included for individuals participating in cross country or in sports utilizing helmets. *Id.* FHSAA recommendations are not requirements under Florida law.

- Establishing guidelines for monitoring heat stress and identify heat stress levels at which a school must make a cooling zone available for each outdoor athletic contest, practice, workout, or conditioning session.
- Requiring member schools to determine heat stress levels based on measuring ambient temperature, humidity, wind speed, sun angle, and cloud cover at the site of the athletic activity and modify athletic activities accordingly, including suspending or moving activities, based on the heat stress guidelines.
- Establishing hydration guidelines, including appropriate introduction of electrolytes after extended activities or when a student participates in multiple athletic activities in a day.
- Establishing requirements for cooling zones, including, at a minimum, the immediate availability of cold-water immersion tubs or equivalent means to rapidly cool internal body temperature when a student exhibits symptoms of exertional heat stroke, and for the presence at athletic activities of an employee or volunteer trained to implement and administer the cooling zones.
- Requiring each school's emergency action plan, as stipulated by the FHSAA, to include a procedure for onsite cooling using cold-water immersion or equivalent means before a student is transported to a hospital for exertional heat stroke.

The bill requires all athletic coaches and sponsors of extracurricular activities involving outdoor practices or events to complete annual training in exertional heat illness identification, prevention, and response, including effective administration of cooling zones.

**Section 3** amends s. 1006.20, F.S., to expand FHSAA bylaws to require all students participating in or who are candidates for interscholastic athletic involvement to satisfactorily pass a medical evaluation yearly prior to participating in conditioning or activities that occur outside of the school year.

These safeguards may protect student athletes and prevent heat-related illness or death.

**Section 4** provides an effective date of July 1, 2020.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will have an indeterminate fiscal impact on Florida High School Athletic Association member schools for costs associated with the purchase of automated external defibrillators (AEDs) and cold water immersion tubs, as necessary, and having an individual with current cardiopulmonary resuscitation and AED training at each athletic activity, including trainings that take place outside of the school year.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1006.165 and 1006.20.

**IX. Additional Information:**

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

**CS/CS by Rules on February 25, 2020:**

The committee substitute specifies that this act may be cited as the “Zachary Martin Act.”

**CS by Education on January 27, 2020:**

The committee substitute alters Florida High School Athletic Association (FHSAA) requirements through:

- Requiring FHSAA member schools to determine heat stress levels based on measuring ambient temperature, humidity, wind speed, sun angle, and cloud cover at the site of the athletic activity, instead of specifying WetBulb Globe Temperature or heat index levels; and
- Removing the requirement that the FHSAA notify member schools in writing within 30 days with a rationale for not adopting the policy recommendation as recommended by the Sports Medicine Advisory Committee when the FHSAA does not adopt a policy change.

The committee substitute also requires each school's emergency action plan to align with FHSAA specifications on procedure for onsite cooling using cold-water immersion or equivalent means before a student is transported to a hospital for exertional heat stroke.

**B. Amendments:**

None.



704616

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2020	.	
	.	
	.	
	.	

The Committee on Rules (Perry) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 20 and 21

insert:

Section 1. This act may be cited as the "Zachary Martin Act."

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

And the title is amended as follows:

Delete line 2

and insert:



704616

12  
13

An act relating to student athletes; providing a short  
title; amending s.

By the Committee on Education; and Senators Perry and Cruz

581-02644-20

20201696c1

1 A bill to be entitled  
 2 An act relating to student athletes; amending s.  
 3 1006.165, F.S.; revising requirements for the  
 4 availability of automated external defibrillators on  
 5 school grounds; delaying implementation of a  
 6 requirement that certain school employees and  
 7 volunteers complete specified training; requiring that  
 8 a school employee or volunteer who has received the  
 9 training be present at certain athletic activities, by  
 10 a specified date; requiring the Florida High School  
 11 Athletic Association to establish certain requirements  
 12 relating to student athlete safety; amending s.  
 13 1006.20, F.S.; requiring that a medical evaluation be  
 14 performed before a student begins conditioning;  
 15 applying requirements related to medical evaluations  
 16 to activities occurring outside the school year;  
 17 providing an effective date.  
 18  
 19 Be It Enacted by the Legislature of the State of Florida:  
 20  
 21 Section 1. Section 1006.165, Florida Statutes, is amended  
 22 to read:  
 23 1006.165 Well-being of students participating in  
 24 extracurricular activities ~~Automated external defibrillator;~~  
 25 ~~user~~ training.-  
 26 (1) (a) Each public school that is a member of the Florida  
 27 High School Athletic Association must have an operational  
 28 automated external defibrillator on the school grounds. The  
 29 defibrillator must be available in a clearly marked and

Page 1 of 5

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

581-02644-20

20201696c1

30 publicized location for each athletic contest, practice,  
 31 workout, or conditioning session, including those conducted  
 32 outside of the school year. Public and private partnerships are  
 33 encouraged to cover the cost associated with the purchase and  
 34 placement of the defibrillator and training in the use of the  
 35 defibrillator.  
 36 (b)(2) Beginning June 1, 2021, a school employee or  
 37 volunteer with current training in cardiopulmonary resuscitation  
 38 and use of a defibrillator must be present at each athletic  
 39 event during and outside of the school year, including  
 40 practices, workouts, and conditioning sessions. The training  
 41 received by the employee or volunteer must include ~~Each school~~  
 42 ~~must ensure that all employees or volunteers who are reasonably~~  
 43 ~~expected to use the device obtain appropriate training,~~  
 44 ~~including~~ completion of a course in cardiopulmonary  
 45 resuscitation or a basic first aid course that includes  
 46 cardiopulmonary resuscitation training, and demonstrated  
 47 proficiency in the use of an automated external defibrillator.  
 48 All employees or volunteers who may be reasonably expected to  
 49 use a defibrillator must complete the training.  
 50 (c)(3) The location of each ~~automated external~~  
 51 defibrillator must be registered with a local emergency medical  
 52 services medical director. Each individual required to complete  
 53 the training under paragraph (b) must be notified annually of  
 54 the location of each defibrillator on the school grounds.  
 55 (2) (a) In order to better protect student athletes  
 56 participating in athletics during hot weather and to avoid  
 57 preventable injury or death, the Florida High School Athletic  
 58 Association shall:

Page 2 of 5

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

581-02644-20

20201696c1

59 1. Make training and resources available to each member  
60 school for the effective monitoring of heat stress.

61 2. Establish guidelines for monitoring heat stress and  
62 identify heat stress levels at which a school must make a  
63 cooling zone available for each outdoor athletic contest,  
64 practice, workout, or conditioning session. Heat stress must be  
65 determined by measuring the ambient temperature, humidity, wind  
66 speed, sun angle, and cloud cover at the site of the athletic  
67 activity.

68 3. Require member schools to monitor heat stress and modify  
69 athletic activities, including suspending or moving activities,  
70 based on the heat stress guidelines.

71 4. Establish hydration guidelines, including appropriate  
72 introduction of electrolytes after extended activities or when a  
73 student participates in multiple activities in a day.

74 5. Establish requirements for cooling zones, including, at  
75 a minimum, the immediate availability of cold-water immersion  
76 tubs or equivalent means to rapidly cool internal body  
77 temperature when a student exhibits symptoms of exertional  
78 heatstroke and the presence of an employee or volunteer trained  
79 to administer cold-water immersion.

80 6. Require each school's emergency action plan, as required  
81 by the Florida High School Athletic Association, to include a  
82 procedure for onsite cooling using cold-water immersion or  
83 equivalent means before a student is transported to a hospital  
84 for exertional heatstroke.

85  
86 The requirements of this paragraph apply year round.

87 (b) Each athletic coach and sponsor of extracurricular

Page 3 of 5

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

581-02644-20

20201696c1

88 activities involving outdoor practices or events shall annually  
89 complete training in exertional heat illness identification,  
90 prevention, and response, including the effective administration  
91 of cooling zones.

92 (4) The use of automated external defibrillators by  
93 employees and volunteers is covered under ss. 768.13 and  
94 768.1325.

95 Section 2. Paragraph (c) of subsection (2) of section  
96 1006.20, Florida Statutes, is amended to read:

97 1006.20 Athletics in public K-12 schools.—

98 (2) ADOPTION OF BYLAWS, POLICIES, OR GUIDELINES.—

99 (c) The FHSAA shall adopt bylaws that require all students  
100 participating in interscholastic athletic competition or who are  
101 candidates for an interscholastic athletic team to  
102 satisfactorily pass a medical evaluation each year prior to  
103 participating in interscholastic athletic competition or  
104 engaging in any practice, tryout, workout, conditioning, or  
105 other physical activity associated with the student's candidacy  
106 for an interscholastic athletic team, including activities that  
107 occur outside of the school year. Such medical evaluation may be  
108 administered only by a practitioner licensed under chapter 458,  
109 chapter 459, chapter 460, or s. 464.012, and in good standing  
110 with the practitioner's regulatory board. The bylaws ~~must shall~~  
111 establish requirements for eliciting a student's medical history  
112 and performing the medical evaluation required under this  
113 paragraph, which ~~must shall~~ include a physical assessment of the  
114 student's physical capabilities to participate in  
115 interscholastic athletic competition as contained in a uniform  
116 preparticipation physical evaluation and history form. The

Page 4 of 5

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

581-02644-20

20201696c1

117 evaluation form must ~~shall~~ incorporate the recommendations of  
118 the American Heart Association for participation cardiovascular  
119 screening and ~~shall~~ provide a place for the signature of the  
120 practitioner performing the evaluation with an attestation that  
121 each examination procedure listed on the form was performed by  
122 the practitioner or by someone under the direct supervision of  
123 the practitioner. The form ~~shall~~ also must contain a place for  
124 the practitioner to indicate if a referral to another  
125 practitioner was made in lieu of completion of a certain  
126 examination procedure. The form must ~~shall~~ provide a place for  
127 the practitioner to whom the student was referred to complete  
128 the remaining sections and attest to that portion of the  
129 examination. The preparticipation physical evaluation form must  
130 ~~shall~~ advise students to complete a cardiovascular assessment  
131 and must ~~shall~~ include information concerning alternative  
132 cardiovascular evaluation and diagnostic tests. Results of such  
133 medical evaluation must be provided to the school. A student is  
134 not eligible to participate, as provided in s. 1006.15(3), in  
135 any interscholastic athletic competition or engage in any  
136 practice, tryout, workout, or other physical activity associated  
137 with the student's candidacy for an interscholastic athletic  
138 team until the results of the medical evaluation have been  
139 received and approved by the school.

140 Section 3. This act shall take effect July 1, 2020.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 20, 2020

---

I respectfully request that **Senate Bill #1696**, relating to Student Athletes, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry".

---

Senator Keith Perry  
Florida Senate, District 8

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/20

Meeting Date

1694

Bill Number (if applicable)

704616

Amendment Barcode (if applicable)

Topic Zachary Martin Act

Name Robert Sefcik

Job Title Executive Director

Address 59 Willow Dr

Street

Phone 9095629269

St Augustine FL 32080

City

State

Zip

Email Robert.Sefcik@bmc  
JMP  
-com

Speaking:  For  Against  Information

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

Representing JMP, FASMed

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Feb. 26, 2020  
Meeting Date

SB1696  
Bill Number (if applicable)

Topic Student Athlete Safety, SB1696 Amendment Barcode (if applicable)

Name Evan D. Lubell

Job Title Senior partner & attorney at Aloia, Roland, Lubell & Morgan, P.C.

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Phone 239.826.3737 (cell)

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Speaking:  For  Against  Information

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

Representing Laurie Giordano

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Feb. 26, 2020

Meeting Date

SB 1696

Bill Number (if applicable)

Topic Student athlete safety bill

Amendment Barcode (if applicable)

Name Laurie Giordano

Job Title President Zach Martin Foundation

Address \_\_\_\_\_

Phone (239) 300-3029

Street

Fort Myers, FL 33913

City

State

Zip

Email zachmartinfooundation@gmail.com

Speaking:  For  Against  Information

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

Representing Zach Martin Foundation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20  
Meeting Date

SB 1696  
Bill Number (if applicable)

Topic Student Athletes

Amendment Barcode (if applicable)

Name Robert Seferik

Job Title Executive Director

Address 59 Willow  
Street

Phone 904 562 9269

87 Augustine FL 32080  
City State Zip

Email Robert.Seferik@bmejax.com

Speaking:  For  Against  Information

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

Representing Jacksonville Sports Medicine Program, FASMed, FASAASMAC

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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**BILL:** CS/SB 500

**INTRODUCER:** Health Policy Committee and Senator Harrell

**SUBJECT:** Prohibited Acts by Health Care Practitioners

**DATE:** February 24, 2020      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	<b>Fav/CS</b>
2.	Howard	Kynoch	AP	<b>Favorable</b>
3.	Rossitto-Van Winkle	Phelps	RC	<b>Pre-meeting</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 500 creates section 456.0465, Florida Statutes, to prohibit a health care practitioner from using certain professional titles that are typically used by allopathic, osteopathic, or podiatric physicians, or dentists, unless the practitioner is licensed or registered by the Department of Health (department) to practice as such. The bill creates exceptions for chiropractic physicians, diplomates, and fellows, and dentists who have achieved diplomate or board certification status. The bill authorizes the department to issue emergency cease and desist orders and take disciplinary action against offending practitioners and gives the department rule making authority.

The bill has an insignificant fiscal impact on the department that can be absorbed within existing resources.

The bill takes effect upon becoming a law.

## II. Present Situation:

### The Department of Health

The Legislature created the Department of Health (department) to protect and promote the health of all residents and visitors in the state.<sup>1</sup> The department 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<sup>2</sup> and professions within the department.<sup>3</sup> The health care practitioners licensed by the department include the following:

- Acupuncturist;<sup>4</sup>
- Allopathic physicians and physician assistants;<sup>5</sup>
- Osteopathic physicians and physician assistants;<sup>6</sup>
- Chiropractic physicians, physician assistants, and registered chiropractic assistants;<sup>7</sup>
- Podiatric physicians;<sup>8</sup>
- Naturopathic physicians;<sup>9</sup>
- Optometrists;<sup>10</sup>
- Advanced practice registered nurses, registered nurses, licensed practical nurses and certified nursing assistant;<sup>11</sup>
- Pharmacists;<sup>12</sup>
- Dentists, dental hygienist and dental laboratories;<sup>13</sup>
- Midwives;<sup>14</sup>
- Speech and language pathologists;<sup>15</sup>
- Audiologists;<sup>16</sup>
- Occupational therapists;<sup>17</sup>
- Respiratory therapists;<sup>18</sup>
- Dietitians and nutritionists;<sup>19</sup>
- Athletic trainers;<sup>20</sup>

<sup>1</sup> Section 20.43, F.S.

<sup>2</sup> 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 department or, in some cases, within the department MQA.

<sup>3</sup> Section 20.43, F.S.

<sup>4</sup> Chapter 457, F.S.

<sup>5</sup> Chapter 458, F.S.

<sup>6</sup> Chapter 459, F.S.

<sup>7</sup> Chapter 460, F.S.

<sup>8</sup> Chapter 461, F.S.

<sup>9</sup> Chapter 462, F.S.

<sup>10</sup> Chapter 463, F.S.

<sup>11</sup> Chapter 464, F.S.

<sup>12</sup> Chapter 465, F.S.

<sup>13</sup> Chapter 466, F.S.

<sup>14</sup> Chapter 467, F.S.

<sup>15</sup> Part I, Chapter 468, F.S.

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

<sup>17</sup> Part III, Chapter 468, F.S.

<sup>18</sup> Part V, Chapter 468, F.S.

<sup>19</sup> Part X, Chapter 468, F.S.

<sup>20</sup> Part XIII, Chapter 468, F.S.

- Orthotists, prosthetists, and pedorthists;<sup>21</sup>
- Electrologists;<sup>22</sup>
- Massage therapists;<sup>23</sup>
- Clinical laboratory personnel;<sup>24</sup>
- Medical physicists;<sup>25</sup>
- Opticians;<sup>26</sup>
- Hearing aid specialists;<sup>27</sup>
- Physical therapists;<sup>28</sup>
- Psychologists and school psychologists;<sup>29</sup> and
- Clinical social workers, mental health counselors and marriage and family therapists.<sup>30</sup>

For each profession under the jurisdiction of the department, the department appoints the board executive director, subject to board approval.<sup>31</sup> The duties conferred on the boards do not include the enlargement, modification, or contravention of the scope of practice of a profession regulated by each board, unless expressly and specifically granted by statute, but the boards may take disciplinary action against a licensee or issue a declaratory statement.<sup>32</sup> Each board member is appointed by the Governor and accountable to the Governor for the proper performance of his or her duties as a member of a board.<sup>33</sup>

#### ***Board of Medicine (BOM)***

The BOM was established to ensure that every physician practicing in this state meets minimum requirements for safe practice. The practice of medicine is a privilege granted by the state. The BOM, through efficient and dedicated organization, is directed to license, monitor, discipline, educate, and, when appropriate, rehabilitate physicians and other practitioners to assure their fitness and competence.<sup>34</sup>

#### ***Board of Osteopathic Medicine (BOOM)***

The BOOM was legislatively established to ensure that every osteopathic physician practicing in this state meets minimum requirements for safe practice. The BOOM is responsible for licensing, monitoring, disciplining, and educating osteopathic physicians to assure competency and safety to practice in Florida.<sup>35</sup>

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<sup>21</sup> Part XIV, Chapter 468, F.S.

<sup>22</sup> Chapter 478, F.S.

<sup>23</sup> Chapter 480, F.S.

<sup>24</sup> Part II, Chapter 483, F.S.

<sup>25</sup> Part III, Chapter 483, F.S.

<sup>26</sup> Part I, Chapter 484, F.S.

<sup>27</sup> Part II, Chapter 484, F.S.

<sup>28</sup> Chapter 486, F.S.

<sup>29</sup> Chapter 490, F.S.

<sup>30</sup> Chapter 491, F.S.

<sup>31</sup> Section 456.004, F.S.

<sup>32</sup> Section 456.003(6), F.S.

<sup>33</sup> Section 456.008, F.S.

<sup>34</sup> The Department of Health, *Board of Medicine*, available at: <https://flboardofmedicine.gov/> (last visited Jan. 7, 2020).

<sup>35</sup> The Department of Health, *Board of Osteopathic Medicine*, available at: <https://floridasosteopathicmedicine.gov/> (last visited Jan. 7, 2020).

***Board of Podiatric Medicine (BPM)***

The BPM was established to ensure that every podiatric physician practicing in this state meets minimum requirements for safe practice. The BPM is directed to license, monitor, discipline, educate, and, when appropriate, rehabilitate practitioners to assure their competence.<sup>36</sup>

***Board of Dentistry (BOD)***

The BOD was established to ensure that every dentist and dental hygienist practicing in this state meets minimum requirements for safe practice. The practice of the profession is a privilege granted by the state. The BOD is responsible for licensure, monitoring and ensuring the safe practice of dentists and dental hygienists.<sup>37</sup>

***Board of Chiropractic Medicine (BCM)***

The BCM was established to ensure that every chiropractic physician practicing in this state meets minimum requirements for safe practice. The BCM is responsible for licensure, monitoring and ensuring the safe practice of chiropractic professionals to assure competency and safety to practice.<sup>38</sup>

***Board of Nursing (BON)***

The BON licenses, monitors, disciplines, educates, and, when appropriate, rehabilitates its licensees to assure their fitness and competence in providing health care services for the people of Florida. The sole legislative purpose in enacting the Nurse Practice Act is to ensure that every nurse practicing in Florida meets minimum requirements for safe practice. It is the intent of the Legislature that nurses who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in Florida.<sup>39</sup>

Section 464.015, F.S., clearly specifies the permissible nursing titles a person may use that holds a valid nursing license in this state, or a multistate license, as follows:

- Licensed Practical Nurse - L.P.N.;
- Registered Nurse - R.N.;
- Clinical Nurse Specialist - C.N.S.;
- Certified Registered Nurse Anesthetist - C.R.N.A. or nurse anesthetist;
- Certified Nurse Midwife - C.N.M. or nurse midwife; and
- Advanced Practice Registered Nurse - A.P.R.N.

A person may not practice or advertise as a registered nurse, licensed practical nurse, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, certified nurse practitioner, or advanced practice registered nurse, or use the abbreviation R.N., L.P.N., C.N.S., C.R.N.A., C.N.M., C.N.P., or A.P.R.N., or take any other action that would lead the public to

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<sup>36</sup> The Department of Health, *Board of Podiatric Medicine*, available at: <https://floridaspodiatricmedicine.gov/> (last visited Jan. 7, 2020).

<sup>37</sup> The Department of Health, *Board of Dentistry*, available at: <https://floridasdentistry.gov/> (last visited Jan. 10, 2020).

<sup>38</sup> The Department of Health, *Board of Chiropractic Medicine*, available at: <https://floridaschiropracticmedicine.gov/> (last visited Jan. 10, 2020).

<sup>39</sup> The Department of Health, *Board of Nursing*, available at: <https://floridasnursing.gov/> (last visited Jan. 7, 2020).

believe that person was authorized by law to practice professional nursing, if the person is not licensed as such, and to do so is a first degree misdemeanor.<sup>40</sup>

On August 8, 2019, at the general BON meeting, the BON considered requests for declaratory statements.<sup>41</sup> The second request for a declaratory statement was made by John P. McDonough, A.P.R.N., license number A.P.R.N. 3344982.<sup>42</sup>

McDonough's Petition for Declaratory Statement acknowledged that the type of Florida nursing license he holds is as a *A.P.R.N.*, and that he is a certified registered nurse anesthetist (C.R.N.A.), but requested that he be permitted to use the phrase "nurse anesthesiologist" as a descriptor for him or his practice, and that the BON not subject him to discipline under ss. 456.072 and 464.018, F.S.,<sup>43</sup> based on the following grounds:

- A New Hampshire Board of Nursing's Position Statement that the nomenclature, *Nurse Anesthesiologist* and *Certified Registered Nurse Anesthesiologist*, are not title changes or an expansion of scope of practice, but are optional, accurate descriptors;<sup>44</sup> and
- Florida law grants no title protection to the words *anesthesiologist* or *anesthetist*.<sup>45</sup>

The Florida Association of Nurse Anesthetists (FANA) and the Florida Medical Association, Inc. (FMA), Florida Society of Anesthesiologists, Inc. (FSA), and Florida Osteopathic Medical Association, Inc. (FOMA), filed timely and legally sufficient<sup>46</sup> motions to intervene<sup>47</sup> pursuant to

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<sup>40</sup> Section 464.015, F.S.

<sup>41</sup> Section 120.565, F.S. Provides that, "[a]ny substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision as it applies to the petitioner's particular set of circumstances. The agency must give notice of the filing of a petition in the Florida Administrative Register, provide copies of the petition to the board, and issue a declaratory statement or deny the petition within 90 days after the filing. The declaratory statement or denial of the petition is then noticed in the next Florida Administrative Register, and disposition of a petition is a final agency action."

<sup>42</sup> The Florida Board of Nursing, Meeting Minutes, Disciplinary Hearings & General Business, Section I. Other, E. *Declaratory Statements*, No. 2, Aug. 8, 2019, p. 9, available at: <https://www10.doh.state.fl.us/pub/bon/Board%20Meetings/August%207-9.%202019/Minutes/August%202019%20Full%20Board%20Minutes.pdf> pp. 32-33 (last visited Jan. 3, 2020).

<sup>43</sup> *Petition for Declaratory Statement Before the Board of Nursing, In re: John P. McDonough, A.P.R.N., C.R.N.A., Ed.D.*, filed at the Department of Health, July 10, 2019, (on file with the Senate Committee on Health Policy).

<sup>44</sup> New Hampshire Board of Nursing, *Petition Statement Regarding the use of Nurse Anesthesiologist as a communication tool and Optional [D]escriptor for Certified Registered Nurse Anesthetists (CRNAs)*, Nov. 20, 2018, available at: <https://www.oplc.nh.gov/nursing/documents/nh-bon-nurse-anesthesiologist.pdf> (last visited Nov. 6, 2019).

<sup>45</sup> *Id.*

<sup>46</sup> Fla. Adm. Code R. 28-105.0027(2) and 28.106.205(2) (2019), both of which state that to be legally sufficient, a motion to intervene in a proceeding on a petition for a declaratory statement must contain the following information: (a) The name, address, the e-mail address, and facsimile number, if any, of the intervenor; if the intervenor is not represented by an attorney or qualified representative;(b) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor's attorney or qualified representative, if any; (c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or *that the substantial interests of the intervenor are subject to determination or will be affected by the declaratory statement*; (d) The signature of the intervenor or intervenor's attorney or qualified representative; and (e) The date.

<sup>47</sup> The Florida Medical Association, Inc., Florida Society of Anesthesiologists, Inc., and Florida Osteopathic Medical Association, Inc., *Motion to Intervene In Florida Board of Nursing's Consideration of the Petition for Declaratory Statement in Opposition of Petitioner John P. McDonough, A.P.R.N., C.R.N.A., Ed.D.*, filed at the Department of Health, Aug. 1, 2019, (available in the Office of Senate Health Policy Committee).

Florida Administrative Code Rule 28-106.205.<sup>48</sup> The FANA's petition<sup>49</sup> was in support of petitioner's Declaratory Statement while the motion filed jointly by the FMA, FSA, and FOMA was in opposition.

The FMA, FSA, and FOMA argued they were entitled to participate in the proceedings, on behalf of their members, as the substantial interests of their members, some 32,300, would be adversely affected by the proceeding.<sup>50, 51</sup> Specifically, the FMA, FSA and FOMA argued that the substantial interests of their respective members would be adversely affected by the issuance of a Declaratory Statement that petitioner could use the term "nurse anesthesiologist," without violating ss. 456.072 and 464.018, F.S., on the grounds that:

- A substantial number of their members use the term "anesthesiologist" with the intent and understanding that patients, and potential patients, would recognize the term to refer to them as physicians licensed under Chapters 458 or 459, F.S., not "nurse anesthetists;"
- Sections 458.3475(1)(a) and 459.023(1)(a), F.S., both define the term "anesthesiologist" as a licensed allopathic or osteopathic physician and do not include in those definitions a "nurse anesthetist;"
- The Merriam-Webster Dictionary defines an "anesthesiologist" as a "physician specializing in anesthesiology," not as a nurse specializing in anesthesia; and
- The Legislature clearly intended a distinction between the titles to be used by physicians practicing anesthesiology and nurses delivering anesthesia, to avoid confusion, as s. 464.015(6), F.S., specifically states that:
  - Only persons who hold valid certificates to practice as certified registered nurse anesthetists in this state may use the title "Certified Registered Nurse Anesthetist" and the abbreviations "C.R.N.A." or "nurse anesthetist;" and
  - Petitioner is licensed as a "registered nurse anesthetist" under s. 464.012(1)(a), F.S., and the term "nurse anesthesiologist" is not found in statute.

At the hearing, the attorney for the BON advised the BON that, "[t]he first thing the Board need[ed] to do [was] determine whether or not the organizations that [had] filed petitions to intervene have standing in order to participate in the discussion of the Declaratory Statement"<sup>52</sup> and that:

"Basically in order to make a determination of whether an organization has standing, they have to show that the members of their organization would have an actual injury in fact, or suffer an immediate harm of some sort of immediacy were the Board to issue this particular Declaratory

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<sup>48</sup> Fla. Adm. Code. R. 28-106.205 (2019), in pertinent part, provides, "Persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may move the presiding officer for leave to intervene."

<sup>49</sup> *Florida Association of Nurse Anesthetists Motion to Intervene*, filed at the Department of Health, July 31, 2019, (on file with the Senate Committee on Health Policy).

<sup>50</sup> *Supra* note 47.

<sup>51</sup> See also *Florida Home Builders Association, et al., Petitioners, v. Department of Labor And Employment Security, Respondent*, 412 S.2d 351 (Fla. 1982), holding that a trade association does have standing under section 120.56(1) to challenge the validity of an agency ruling on behalf of its members when that association fairly represents members who have been substantially affected by the ruling.

<sup>52</sup> Record at p. 3, ll. 13-17. Declaratory Statement, Dr. John P. McDonough, Before the Board of Nurses, State of Florida, Department of Health, Sanibel Harbor Marriott. (on file with the Senate Committee on Health Policy).

Statement, and then the Board also has to make a determination of whether the nature of the injury would be within the zone of interest that the statute is addressing.”<sup>53</sup>

However, the above special injury standard,<sup>54</sup> provided by board counsel to the BON to apply to determine the organizations’ standing to intervene, based on their members’ substantial interests being affected by the declaratory statement, was held inapplicable to trade associations in *Florida Home Builders Ass’n. v. Department of Labor and Employment Security*, 412 So.2d 351 (Fla. 1982). The Florida Supreme Court, in *Florida Home Builders, Ass’n.*, held that a trade or professional association is able to challenge an agency action on behalf of its members, even though each member could individually challenge the agency action, if the organization could demonstrate that:

- A substantial number of the association members, though not necessarily a majority, would be “substantially affected” by the challenged action;
- The subject matter of the challenged action is within the association’s scope of interest and activity; and
- The relief requested is appropriate for the association’s members.<sup>55</sup>

Thus, the FANA’s motion to intervene was granted, based on the application of an incorrect standard, without the BON making the findings required by *Florida Home Builders, Ass’n.* The motion to intervene filed by the FMA, FSA, and FOMA was denied, also based on the application of an incorrect standard, on the grounds that:

- Their members are regulated by the Board of Medicine, not the Board of Nursing;
- Nursing disciplinary guidelines were being discussed;
- Their members licenses and discipline would not be affected by an interpretation of nursing discipline;<sup>56</sup>and
- Their members are not regulated by the Nurse Practice Act.

A motion was made to approve McDonough’s Petition for Declaratory Statement, and it passed unanimously. Accordingly, McDonough may now use of the term “nurse anesthesiologist” as a descriptor, and such use is not grounds for discipline against his nursing license. However, while s. 120.565, F.S., provides that any person may seek a declaratory statement regarding the potential impact of a statute, rule or agency opinion on a petitioner’s particular situation, approval or denial of the petition only applies to the petitioner. It is not a method of obtaining a policy statement from a board of general applicability.<sup>57</sup>

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<sup>53</sup> *Id.* p. 3-4, ll. 22- 25, 1-6.

<sup>54</sup> *United States Steel Corp. v. Save Sand Key, Inc.*, 303 So.2d 9 (Fla. 1974).

<sup>55</sup> *Florida Home Builders Ass’n. v. Department of Labor and Employment Security*, 412 So.2d 351 (Fla. 1982), pp. 353-354.

<sup>56</sup> Record at p. 7, ll. 1-13. Declaratory Statement, Dr. John P. McDonough, Before the Board of Nurses, State of Florida, Department of Health, Sanibel Harbor Marriott. (on file with the Senate Committee on Health Policy).

<sup>57</sup> Florida Department of Health, Board of Nursing, *What is a Declaratory Statement?*, available at: <https://floridasnursing.gov/help-center/what-is-a-declaratory-statement/> (last visited Dec. 13, 2019).

News media have reported that the BON's Declaratory Statement in favor of McDonough has created significant concern for patient safety and the potential for confusion in the use of the moniker "anesthesiologist" among Florida's medical professionals.<sup>58, 59, 60</sup>

### III. Effect of Proposed Changes:

The bill creates s. 456.0465, F.S., to prohibit a licensed health care practitioner from using certain professional names or titles that are typically used by allopathic physicians, osteopathic physicians, podiatric physicians, or dentists licensed under chs. 458, 459, 461, and 466, F.S., unless the practitioner is licensed or registered by the Department of Health (department) to practice as such. The department must take disciplinary action against any licensed health care practitioner who uses any of the following names, titles, or initials to indicate or imply that he or she is authorized by those chapters to practice under those chapters when he or she is not so authorized:

Physician, surgeon, dentist, medical doctor, doctor of osteopathy, doctor of dental medicine, doctor of dental surgery, M.D., D.M.D., D.D.S., anesthesiologist, cardiologist, dermatologist, endocrinologist, endodontist, gastroenterologist, general practitioner, gynecologist, hematologist, hospitalist, internist, interventional pain medicine physician, laryngologist, nephrologist, neurologist, obstetrician, oncologist, ophthalmologist, oral and maxillofacial surgeon, orthodontist, orthopedic surgeon, orthopedist, osteopath, otologist, otolaryngologist, otorhinolaryngologist, pathologist, pediatrician, physiatrist, pedodontist, periodontist, podiatrist, primary care physician, proctologist, prosthodontist, psychiatrist, radiologist, rheumatologist, rhinologist, or urologist, or any other words, letters, abbreviations, or insignia indicating or implying that he or she is licensed or authorized by chapter 458, chapter 459, chapter 461, or chapter 466 to practice as such.

The bill provides that an allopathic, osteopathic, or podiatric physician, or dentist, who is not licensed by the department but is registered as an out-of-state telehealth provider under s. 456.47(4), F.S., is not subject to the prohibition.

The bill provides that, notwithstanding the bill's prohibition, a licensed dentist who has achieved diplomate status or board certification from the American Board of Dental Public Health, the American Board of Endodontics, the American Board of Oral and Maxillofacial Pathology, the American Board of Oral and Maxillofacial Radiology, the American Board of Oral and Maxillofacial Surgery, the American Board of Orthodontics, the American Board of Pediatric

<sup>58</sup> Christine Sexton, The News Service of Florida, "Nursing Board Signs Off On 'Anesthesiologist' Title," August 16, 2019, The Gainesville Sun, available at: <https://www.gainesville.com/news/20190816/nursing-board-signs-off-on-anesthesiologist-title> (last visited Dec. 13, 2019).

<sup>59</sup> Christine Sexton, The News Service of Florida, "Florida Lawmaker Takes Aim At Health Care Titles," October 10, 2019, Health News Florida, available at: <https://health.wusf.usf.edu/post/florida-lawmaker-takes-aim-health-care-titles> (last visited Dec. 13, 2019).

<sup>60</sup> Christine Section, The News Service of Florida, "What's In A Name? Health Panel Seeks Clarity on Health Care Providers," November 14, 2019, available at: <https://health.wusf.usf.edu/post/what-s-name-health-panel-seeks-clarity-health-care-providers> (last visited Dec. 13, 2019).

Dentistry, the American Board of Periodontology, the American Board of Prosthodontics, the American Board of Oral Implantology/Implant Dentistry, the American Board of Oral Medicine, the American Board of Orofacial Pain, the American Dental Board of Anesthesiology, or the American Board of General Dentistry, in a specific specialty or subspecialty, may use the following as appropriate for his or her diplomate or board certification status:

- Dental anesthesiologist;
- Doctor of oral medicine;
- Dental oral and maxillofacial radiologist;
- Dental orthodontic and dentofacial orthopedist;
- Dental oral and maxillofacial pathologist; or
- Any other names or titles associated with such diplomate or board certification status.

Additionally, a licensed doctor of chiropractic medicine, or a chiropractic physician registered with the Board of Chiropractic Medicine (BCM) as a telehealth provider, may use the name or title “doctor of chiropractic medicine” or “chiropractic physician” under the bill. A licensed chiropractic physician who has achieved diplomate or fellow status from the American Board of Chiropractic Specialties, American Chiropractic Board of Sports Physicians, American College of Chiropractic Orthopedists, American Chiropractic Neurology Board, International Chiropractors Association, or International Chiropractic Pediatric Association, or in a specific specialty or subspecialty, may use, as appropriate for his or her diplomate or fellow status, the following:

- Chiropractic radiologist;
- Chiropractic internist;
- Chiropractic neurologist;
- Chiropractic orthopedist;
- Chiropractic pediatrician; or
- Any other names or titles associated with such diplomate or fellow status.

If the department finds that any licensed health care practitioner is utilizing any of the listed names, titles, words, letters, abbreviations or insignia, without authorization, the bill requires the department to issue to the practitioner an emergency order to cease and desist and send the order to the practitioner by certified mail and email, or to any other mailing address or email address by which the department believes the person may be reached.

If the practitioner does not immediately cease and desist his or her actions upon receipt of the emergency cease and desist order, the department must enter an order imposing one or more of the following penalties until the practitioner complies:

- A citation and a daily fine.
- A reprimand or a letter of concern.
- Suspension of license.

The bill authorizes the department to make rules to implement the bill.

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:

None.

## C. Government Sector Impact:

The Department of Health may experience a workload increase associated with additional complaints and non-recurring costs associated with rule-making; however, these costs can be absorbed within existing resources.<sup>61</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>61</sup> Department of Health fiscal analysis (December 18, 2020) (on file with the Senate Appropriations Subcommittee on Health and Human Services).

**VIII. Statutes Affected:**

This bill creates section 456.0465 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 Health Policy on January 14, 2020:**

The CS creates s. 456.0465, F.S., and:

- Changes the focus of the bill from “a person” to “a licensed health care practitioner”;
- Removes the requirement that the Department of Health (department) prove that the offending party “knowingly” misused one of the listed monikers;
- Eliminates the specific definitions for “anesthesiologist”;
- Creates exceptions for the use of the monikers “doctor of chiropractic” and “chiropractic physician” and for those chiropractic titles associated with achieving diplomate or fellow status;
- Creates exceptions for the titles used by dentists who has achieved diplomate or board certification status;
- Enumerates specific penalties for the violation of the bill’s provisions; and
- Grants the department rule making authority.

- B. **Amendments:**

None.



150030

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/28/2020	.	
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The Committee on Rules (Harrell) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 456.0465, Florida Statutes, is created  
to read:

456.0465 Health care practitioners; prohibited actions.—

(1) (a) Except for an allopathic physician licensed under  
chapter 458, an osteopathic physician licensed under chapter  
459, or an allopathic or osteopathic physician registered with  
the appropriate board pursuant to s. 456.47(4), a health care



150030

12 practitioner licensed by the department may not use the name or  
13 title "allopathic physician," "M.D.," "medical doctor," "doctor  
14 of osteopathy," "D.O.," "osteopathic physician," "surgeon,"  
15 "anesthesiologist," "cardiologist," "dermatologist," "emergency  
16 physician," "endocrinologist," "family physician,"  
17 "gastroenterologist," "gynecologist," "hematologist,"  
18 "hospitalist," "internist," "interventional pain medicine  
19 physician," "laryngologist," "nephrologist," "neurologist,"  
20 "obstetrician," "oncologist," "ophthalmologist," "orthopedic  
21 surgeon," "orthopedist," "osteopath," "otologist,"  
22 "otolaryngologist," "otorhinolaryngologist," "pathologist,"  
23 "pediatrician," "physiatrist," "primary care physician,"  
24 "proctologist," "psychiatrist," "radiologist," "rheumatologist,"  
25 "rhinologist," or "urologist" or any other words, letters,  
26 abbreviations, or insignia indicating or implying that he or she  
27 is authorized to practice as such, regardless of whether the  
28 name or title is used alone or as a descriptor for a name or  
29 title the practitioner is authorized to use under their practice  
30 act.

31 (b) The omission of the name or title "physician" or any  
32 other name or title in this section does not authorize a health  
33 care practitioner to use such name or title as a descriptor of  
34 his or her practice. It is the intent of the legislature that  
35 the rule of expressio unius est exclusio alterius does not apply  
36 when interpreting this section.

37 (c) If the department finds that any licensed health care  
38 practitioner has violated paragraph (a), the department shall  
39 issue an emergency order to the practitioner to cease and desist  
40 the use of such name, title, words, letters, abbreviations, or



150030

41 insignia. The department shall send the emergency cease and  
42 desist order to the practitioner by certified mail and email to  
43 the practitioner's physical address and email address of record  
44 with the department and to any other mailing address or email  
45 address through which the department believes the person may be  
46 reached.

47 (d) If the practitioner does not cease and desist his or  
48 her actions in violation of paragraph (a) immediately upon  
49 receipt of the emergency cease and desist order, the department  
50 shall enter an order imposing one or more of the following  
51 penalties until the practitioner complies with the cease and  
52 desist order:

- 53 1. A citation and a daily fine.
- 54 2. A reprimand or a letter of concern.
- 55 3. Suspension of license.

56 (e) Notwithstanding paragraphs (a)-(d):

57 1. A doctor of chiropractic medicine licensed under chapter  
58 460, or a chiropractic physician registered with the board of  
59 chiropractic medicine pursuant to s. 456.47(4), to practice as  
60 such, may use the name or title "doctor of chiropractic  
61 medicine" or "chiropractic physician."

62 2. A licensed chiropractic physician who has achieved  
63 diplomate or fellow status from the American Board of  
64 Chiropractic Specialties, American Chiropractic Board of Sports  
65 Physicians, American College of Chiropractic Orthopedists,  
66 American Chiropractic Neurology Board, International  
67 Chiropractors Association, or International Chiropractic  
68 Pediatric Association, or in a specific specialty or  
69 subspecialty, may use, as appropriate for his or her diplomate



70 or fellow status, "chiropractic radiologist," "chiropractic  
71 internist," "chiropractic neurologist," "chiropractic  
72 orthopedist," or "chiropractic pediatrician," in addition to  
73 other names or titles associated with such diplomate or fellow  
74 status.

75 3. A licensed dentist who has achieved diplomate status or  
76 board certification from the American Board of Dental Public  
77 Health, the American Board of Endodontics, the American Board of  
78 Oral and Maxillofacial Pathology, the American Board of Oral and  
79 Maxillofacial Radiology, the American Board of Oral and  
80 Maxillofacial Surgery, the American Board of Orthodontics, the  
81 American Board of Pediatric Dentistry, the American Board of  
82 Periodontology, the American Board of Prosthodontics, the  
83 American Board of Oral Implantology/Implant Dentistry, the  
84 American Board of Oral Medicine, the American Board of Orofacial  
85 Pain, the American Dental Board of Anesthesiology, or the  
86 American Board of General Dentistry, in a specific specialty or  
87 subspecialty, may use, as appropriate for his or her diplomate  
88 status or board certification, the name or term "dental  
89 anesthesiologist," "doctor of oral medicine," "dental oral and  
90 maxillofacial radiologist," "dental orthodontic and dentofacial  
91 orthopedist," or "dental oral and maxillofacial pathologist," in  
92 addition to other names or titles associated with such diplomate  
93 status or board certification.

94 (2) The department may adopt rules to implement this  
95 section.

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

97  
98 ===== T I T L E A M E N D M E N T =====



150030

99 And the title is amended as follows:

100 Delete everything before the enacting clause  
101 and insert:

102 A bill to be entitled  
103 An act relating to prohibited acts by health care  
104 practitioners; creating s. 456.0465, F.S.; specifying  
105 names and titles that licensed health care  
106 practitioners are prohibited from using under certain  
107 circumstances; providing construction and legislative  
108 intent; requiring the Department of Health to issue an  
109 emergency cease and desist order for specified  
110 violations; providing exceptions; providing for  
111 service of the order; providing penalties; authorizing  
112 the department to adopt rules; providing an effective  
113 date.



753712

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/26/2020	.	
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The Committee on Rules (Harrell) recommended the following:

**Senate Amendment to Amendment (150030)**

Delete lines 34 - 36  
and insert:  
his or her practice. It is the intent of the Legislature that  
the general principal of statutory construction that the  
expression of one thing is the exclusion of the other does not  
apply when interpreting this section.



180070

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/28/2020	.	
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The Committee on Rules (Harrell) recommended the following:

1           **Senate Substitute for Amendment (150030) (with title**  
2 **amendment)**

3  
4           Delete everything after the enacting clause  
5 and insert:

6           Section 1. Section 456.0465, Florida Statutes, is created  
7 to read:

8           456.0465 Health care practitioners; prohibited actions.-  
9           (1) (a) Except for an allopathic physician licensed under  
10 chapter 458, an osteopathic physician licensed under chapter  
11 459, a dentist licensed under chapter 466, or a dentist, an



180070

12 allopathic physician, or an osteopathic physician registered  
13 with the appropriate board pursuant to s. 456.47(4), a health  
14 care practitioner licensed by the department may not use the  
15 name or title "allopathic physician," "M.D.," "medical doctor,"  
16 "doctor of osteopathy," "D.O.," "osteopathic physician,"  
17 "surgeon," "anesthesiologist," "cardiologist," "dermatologist,"  
18 "emergency physician," "endocrinologist," "family physician,"  
19 "gastroenterologist," "gynecologist," "hematologist,"  
20 "hospitalist," "internist," "interventional pain medicine  
21 physician," "laryngologist," "nephrologist," "neurologist,"  
22 "obstetrician," "oncologist," "ophthalmologist," "orthopedic  
23 surgeon," "orthopedist," "osteopath," "otolaryngologist,"  
24 "otologist," "otorhinolaryngologist," "pathologist,"  
25 "pediatrician," "physiatrist," "primary care physician,"  
26 "proctologist," "psychiatrist," "radiologist," "rheumatologist,"  
27 "rhinologist," or "urologist" or any other words, letters,  
28 abbreviations, or insignia indicating or implying that he or she  
29 is authorized to practice as such, regardless of whether the  
30 name or title is used alone or as a descriptor for a name or  
31 title that the practitioner is authorized to use under his or  
32 her practice act.

33 (b) The omission of the name or title "physician" or any  
34 other name or title in this section does not authorize a health  
35 care practitioner to use such name or title as a descriptor of  
36 his or her practice if he or she is not licensed to practice as  
37 such. It is the intent of the Legislature that the general  
38 principle of statutory construction, that the expression of one  
39 thing is the exclusion of the other, does not apply when  
40 interpreting this section.



180070

41       (c) If the department finds that any licensed health care  
42 practitioner has violated paragraph (a), the department must  
43 issue an emergency order requiring that the practitioner cease  
44 and desist the use of such name, title, words, letters,  
45 abbreviations, or insignia. The department shall send the  
46 emergency cease and desist order to the practitioner by  
47 certified mail and e-mail to the practitioner's physical address  
48 and e-mail address of record, respectively, with the department  
49 and to any other mailing address or e-mail address through which  
50 the department believes the person may be reached.

51       (d) If the practitioner does not immediately cease and  
52 desist his or her actions in violation of paragraph (a) upon  
53 receipt of the emergency cease and desist order, the department  
54 must enter an order imposing one or more of the following  
55 penalties until the practitioner complies with the emergency  
56 cease and desist order:

- 57       1. A citation and a daily fine.  
58       2. A reprimand or a letter of concern.  
59       3. Suspension of license.

60       (e) Notwithstanding paragraphs (a)-(d):

61       1. A doctor of chiropractic medicine licensed under chapter  
62 460 or a chiropractic physician registered with the board of  
63 chiropractic medicine pursuant to s. 456.47(4) to practice as  
64 such may use the name or title "doctor of chiropractic medicine"  
65 or "chiropractic physician."

66       2. A licensed chiropractic physician who has achieved  
67 diplomate or fellow status in a specific specialty or  
68 subspecialty from the American Board of Chiropractic  
69 Specialties, the American Chiropractic Board of Sports



70 Physicians, the American College of Chiropractic Orthopedists,  
71 the American Chiropractic Neurology Board, the International  
72 Chiropractors Association, or the International Chiropractic  
73 Pediatric Association may use, as appropriate for his or her  
74 diplomate or fellow status, the names and titles "chiropractic  
75 internist," "chiropractic neurologist," "chiropractic  
76 orthopedist," "chiropractic pediatrician," or "chiropractic  
77 radiologist," in addition to other names or titles associated  
78 with such diplomate or fellow status.

79 3. A licensed dentist who has achieved diplomate status or  
80 board certification in a specific specialty or subspecialty from  
81 the American Board of Dental Public Health, the American Board  
82 of Endodontics, the American Board of Oral and Maxillofacial  
83 Pathology, the American Board of Oral and Maxillofacial  
84 Radiology, the American Board of Oral and Maxillofacial Surgery,  
85 the American Board of Orthodontics, the American Board of  
86 Pediatric Dentistry, the American Board of Periodontology, the  
87 American Board of Prosthodontics, the American Board of Oral  
88 Implantology/Implant Dentistry, the American Board of Oral  
89 Medicine, the American Board of Orofacial Pain, the American  
90 Dental Board of Anesthesiology, or the American Board of General  
91 Dentistry may use, as appropriate for his or her diplomate  
92 status or board certification, the name or term "dental  
93 anesthesiologist," "doctor of oral medicine," "dental oral and  
94 maxillofacial radiologist," "dental orthodontic and dentofacial  
95 orthopedist," or "dental oral and maxillofacial pathologist," in  
96 addition to other names or titles associated with such diplomate  
97 status or board certification.

98 (2) The department may adopt rules to implement this



180070

99 section.

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

101

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

103 And the title is amended as follows:

104 Delete everything before the enacting clause

105 and insert:

106 A bill to be entitled

107 An act relating to prohibited acts by health care

108 practitioners; creating s. 456.0465, F.S.; specifying

109 names and titles that licensed health care

110 practitioners are prohibited from using under certain

111 circumstances; providing exceptions; providing

112 construction and legislative intent; requiring the

113 Department of Health to issue an emergency cease and

114 desist order for specified violations; providing for

115 service of the order; providing penalties; providing

116 exceptions; authorizing the department to adopt rules;

117 providing an effective date.



668434

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Harrell) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraphs (a) and (t) of subsection (1) and  
subsection (2) of section 456.072, Florida Statutes, are amended  
to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which  
the disciplinary actions specified in subsection (2) may be  
taken:



668434

12 (a) Making misleading, deceptive, or fraudulent  
13 representations in or related to the practice of the licensee's  
14 profession or specialty designation. Use of the term  
15 "anesthesiologist" or "dermatologist" is prohibited unless the  
16 practitioner is licensed as such under chapter 458 or chapter  
17 459.

18 (t) Failing to identify through written notice, which may  
19 include the wearing of a name tag, or orally to a patient the  
20 type of license or specialty designation under which the  
21 practitioner is practicing. Any advertisement for health care  
22 services naming the practitioner must identify the type of  
23 license the practitioner holds. This paragraph does not apply to  
24 a practitioner while the practitioner is providing services in a  
25 facility licensed under chapter 394, chapter 395, chapter 400,  
26 or chapter 429. The department shall enforce this paragraph ~~Each~~  
27 ~~board, or the department where there is no board, is authorized~~  
28 ~~by rule to determine how its practitioners may comply with this~~  
29 ~~disclosure requirement.~~

30 (2) (a) When the board, or the department when there is no  
31 board, finds any person guilty of the grounds set forth in  
32 subsection (1) or of any grounds set forth in the applicable  
33 practice act, including conduct constituting a substantial  
34 violation of subsection (1) or a violation of the applicable  
35 practice act which occurred prior to obtaining a license, it may  
36 enter an order imposing one or more of the following penalties:

37 1. ~~(a)~~ Refusal to certify, or to certify with restrictions,  
38 an application for a license.

39 2. ~~(b)~~ Suspension or permanent revocation of a license.

40 3. ~~(c)~~ Restriction of practice or license, including, but



668434

41 not limited to, restricting the licensee from practicing in  
42 certain settings, restricting the licensee to work only under  
43 designated conditions or in certain settings, restricting the  
44 licensee from performing or providing designated clinical and  
45 administrative services, restricting the licensee from  
46 practicing more than a designated number of hours, or any other  
47 restriction found to be necessary for the protection of the  
48 public health, safety, and welfare.

49 4.~~(d)~~ Imposition of an administrative fine not to exceed  
50 \$10,000 for each count or separate offense. If the violation is  
51 for fraud or making a false or fraudulent representation, the  
52 board, or the department if there is no board, must impose a  
53 fine of \$10,000 per count or offense.

54 5.~~(e)~~ Issuance of a reprimand or letter of concern.

55 6.~~(f)~~ Placement of the licensee on probation for a period  
56 of time and subject to such conditions as the board, or the  
57 department when there is no board, may specify. Those conditions  
58 may include, but are not limited to, requiring the licensee to  
59 undergo treatment, attend continuing education courses, submit  
60 to be reexamined, work under the supervision of another  
61 licensee, or satisfy any terms which are reasonably tailored to  
62 the violations found.

63 7.~~(g)~~ Corrective action.

64 8.~~(h)~~ Imposition of an administrative fine in accordance  
65 with s. 381.0261 for violations regarding patient rights.

66 9.~~(i)~~ Refund of fees billed and collected from the patient  
67 or a third party on behalf of the patient.

68 10.~~(j)~~ Requirement that the practitioner undergo remedial  
69 education.



668434

70  
71 In determining what action is appropriate, the board, or  
72 department when there is no board, must first consider what  
73 sanctions are necessary to protect the public or to compensate  
74 the patient. Only after those sanctions have been imposed may  
75 the disciplining authority consider and include in the order  
76 requirements designed to rehabilitate the practitioner. All  
77 costs associated with compliance with orders issued under this  
78 subsection are the obligation of the practitioner.

79 (b)1. If the department finds that any licensed health care  
80 practitioner has violated paragraph (1)(a), the department must  
81 issue an emergency order to the practitioner to cease and desist  
82 the use of such name, title, words, letter, abbreviations, or  
83 insignia. The department shall send the emergency cease and  
84 desist order to the practitioner by certified mail and e-mail to  
85 the practitioner's physical address and e-mail address of record  
86 with the department and to any other mailing address or e-mail  
87 address through which the department believes the person may be  
88 reached.

89 2. If the practitioner does not cease and desist his or her  
90 actions in violation of paragraph (1)(a) immediately upon  
91 receipt of the emergency cease and desist order, the department  
92 must enter an order imposing any of the following penalties, or  
93 a combination thereof, until the practitioner complies with the  
94 cease and desist order:

- 95 a. A citation and a daily fine.  
96 b. A reprimand or a letter of concern.  
97 c. Suspension of license.

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



668434

99

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

101 And the title is amended as follows:

102       Delete everything before the enacting clause

103 and insert:

104                               A bill to be entitled

105       An act relating to prohibited acts by health care  
106       practitioners; amending s. 456.072, F.S.; prohibiting  
107       specified acts by health care practitioners regarding  
108       specialty designations; authorizing the Department of  
109       Health to enforce compliance with the act; authorizing  
110       the department to take specified disciplinary action  
111       against health care practitioners in violation of the  
112       act; specifying applicable penalties; providing an  
113       effective date.



559144

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/24/2020	.	
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The Committee on Rules (Harrell) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 41 and 42  
insert:

(b) The omission of the word, name, term, or title "physician" or any other word, name, term, or title from this section does not authorize a health care practitioner to use such word, name, term, or title as a descriptor of his or her practice if he or she is not licensed to practice as such. It is the intent of the Legislature that the doctrine of *expressio unius est exclusio alterius* not apply when interpreting this



559144

12 section.

13

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

15 And the title is amended as follows:

16       Delete line 6

17 and insert:

18       circumstances; providing construction and legislative

19       intent; requiring the Department of Health to

By the Committee on Health Policy; and Senator Harrell

588-02262-20

2020500c1

1 A bill to be entitled  
 2 An act relating to prohibited acts by health care  
 3 practitioners; creating s. 456.0465, F.S.; specifying  
 4 names and titles that licensed health care  
 5 practitioners are prohibited from using under certain  
 6 circumstances; requiring the Department of Health to  
 7 issue an emergency cease and desist order for  
 8 specified violations; providing exceptions; providing  
 9 for service of the order; providing penalties;  
 10 authorizing the department to adopt rules; providing  
 11 an effective date.  
 12  
 13 Be It Enacted by the Legislature of the State of Florida:  
 14  
 15 Section 1. Section 456.0465, Florida Statutes, is created  
 16 to read:  
 17 456.0465 Health care practitioners; prohibited actions.—  
 18 (1) (a) A health care practitioner licensed by the  
 19 department may not use the name or title "physician," "surgeon,"  
 20 "dentist," "medical doctor," "doctor of osteopathy," "doctor of  
 21 dental medicine," "doctor of dental surgery," "M.D.," "D.M.D.,"  
 22 "D.D.S.," "anesthesiologist," "cardiologist," "dermatologist,"  
 23 "endocrinologist," "endodontist," "gastroenterologist," "general  
 24 practitioner," "gynecologist," "hematologist," "hospitalist,"  
 25 "internist," "interventional pain medicine physician,"  
 26 "laryngologist," "nephrologist," "neurologist," "obstetrician,"  
 27 "oncologist," "ophthalmologist," "oral and maxillofacial  
 28 surgeon," "orthodontist," "orthopedic surgeon," "orthopedist,"  
 29 "osteopath," "otologist," "otolaryngologist,"

Page 1 of 4

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

588-02262-20

2020500c1

30 "otorhinolaryngologist," "pathologist," "pediatrician,"  
 31 "physiatrist," "pedodontist," "periodontist," "podiatrist,"  
 32 "primary care physician," "proctologist," "prosthodontist,"  
 33 "psychiatrist," "radiologist," "rheumatologist," "rhinologist,"  
 34 or "urologist," or any other words, letters, abbreviations, or  
 35 insignia indicating or implying that he or she is licensed or  
 36 authorized by chapter 458, chapter 459, chapter 461, or chapter  
 37 466 to practice as such, unless he or she is licensed and  
 38 authorized by one of those chapters, or is registered with the  
 39 appropriate board as an allopathic, osteopathic, or podiatric  
 40 physician or dentist pursuant to s. 456.47(4), to practice as  
 41 such.  
 42 (b) If the department finds that any licensed health care  
 43 practitioner has violated paragraph (a), the department shall  
 44 issue an emergency order to the practitioner to cease and desist  
 45 the use of such name, title, words, letters, abbreviations, or  
 46 insignia. The department shall send the emergency cease and  
 47 desist order to the practitioner by certified mail and email to  
 48 the practitioner's physical address and email address of record  
 49 with the department and to any other mailing address or email  
 50 address through which the department believes the person may be  
 51 reached.  
 52 (c) If the practitioner does not cease and desist his or  
 53 her actions in violation of paragraph (a) immediately upon  
 54 receipt of the emergency cease and desist order, the department  
 55 shall enter an order imposing one or more of the following  
 56 penalties until the practitioner complies with the cease and  
 57 desist order:  
 58 1. A citation and a daily fine.

Page 2 of 4

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

588-02262-20

2020500c1

59 2. A reprimand or a letter of concern.  
 60 3. Suspension of license.  
 61 (d) Notwithstanding paragraphs (a)-(c):  
 62 1. A doctor of chiropractic medicine licensed under chapter  
 63 460, or a chiropractic physician registered with the board of  
 64 chiropractic medicine pursuant to s. 456.47(4), to practice as  
 65 such, may use the name or title "doctor of chiropractic  
 66 medicine" or "chiropractic physician."  
 67 2. A licensed chiropractic physician who has achieved  
 68 diplomate or fellow status from the American Board of  
 69 Chiropractic Specialties, American Chiropractic Board of Sports  
 70 Physicians, American College of Chiropractic Orthopedists,  
 71 American Chiropractic Neurology Board, International  
 72 Chiropractors Association, or International Chiropractic  
 73 Pediatric Association, or in a specific specialty or  
 74 subspecialty, may use, as appropriate for his or her diplomate  
 75 or fellow status, "chiropractic radiologist," "chiropractic  
 76 internist," "chiropractic neurologist," "chiropractic  
 77 orthopedist," or "chiropractic pediatrician," in addition to  
 78 other names or titles associated with such diplomate or fellow  
 79 status.  
 80 3. A licensed dentist who has achieved diplomate status or  
 81 board certification from the American Board of Dental Public  
 82 Health, the American Board of Endodontics, the American Board of  
 83 Oral and Maxillofacial Pathology, the American Board of Oral and  
 84 Maxillofacial Radiology, the American Board of Oral and  
 85 Maxillofacial Surgery, the American Board of Orthodontics, the  
 86 American Board of Pediatric Dentistry, the American Board of  
 87 Periodontology, the American Board of Prosthodontics, the

Page 3 of 4

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

588-02262-20

2020500c1

88 American Board of Oral Implantology/Implant Dentistry, the  
 89 American Board of Oral Medicine, the American Board of Orofacial  
 90 Pain, the American Dental Board of Anesthesiology, or the  
 91 American Board of General Dentistry, in a specific specialty or  
 92 subspecialty, may use, as appropriate for his or her diplomate  
 93 status or board certification, the name or term "dental  
 94 anesthesiologist," "doctor of oral medicine," "dental oral and  
 95 maxillofacial radiologist," "dental orthodontic and dentofacial  
 96 orthopedist," or "dental oral and maxillofacial pathologist," in  
 97 addition to other names or titles associated with such diplomate  
 98 status or board certification.  
 99 (2) The department may adopt rules to implement this  
 100 section.  
 101 Section 2. This act shall take effect upon becoming a law.

Page 4 of 4

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Health Policy, *Chair*  
Appropriations Subcommittee on Health  
and Human Services, *Vice Chair*  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Children, Families, and Elder Affairs  
Military and Veterans Affairs and Space

JOINT COMMITTEE:  
Joint Committee on Public Counsel Oversight

SENATOR GAYLE HARRELL  
25th District

February 10, 2020

Senator Lizbeth Benacquisto  
402 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399

Chair Benacquisto,

I respectfully request that **SB 500 – Prohibited Acts by Health Care Practitioners** be placed on the next available agenda for the Committee on Rules. SB 500 passed its last committee stop unanimously.

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

Thank you,

A handwritten signature in cursive script that reads "Gayle".

Senator Gayle Harrell  
Senate District 25

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

REPLY TO:

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
- 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

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

BILL GALVANO  
President of the Senate

DAVID SIMMONS  
President Pro Tempore

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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**BILL:** CS/CS/CS/SB 1516

**INTRODUCER:** Rules Committee; Judiciary Committee; Health Policy Committee; and Senator Harrell

**SUBJECT:** Organ Donation

**DATE:** February 27, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<b>Fav/CS</b>
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
3.	<u>Looke</u>	<u>Phelps</u>	<u>RC</u>	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 1516 amends multiple sections of law related to organ donations. The bill:

- Authorizes a human immunodeficiency virus (HIV)-positive patient to donate blood, plasma, organs, skin, or other human tissue to an HIV-positive recipient who knows the donor is HIV positive.
- Requires the Agency for Health Care Administration (AHCA) to adopt rules establishing specified ongoing minimum volume standards to maintain licensure to provide specified organ transplants.
- Prohibits a health insurance policy from limiting or excluding coverage for a living organ donor based on a preexisting condition.
- Prohibits an organ transplantation facility or procurement organization from charging a living or deceased organ donor or his or her family any fee for services relating to the procurement or donation of the donor's organs.
- Adds a statement on the uniform donor card application form that neither the donor nor his or her family is responsible for the payment of any fees associated with services relating to the procurement or donation of the donor's organs, tissues, or eyes.
- Expands the organ donation education program to include federal laws and information on the organ donation and transplantation process.
- Establishes additional requirements for the AHCA related to organ transplantation evaluation, reporting, and education.
- Renames the Organ Transplant Advisory Council as the Organ Transplant Technical Advisory Council (Council), and assigns duties to develop quality standards for programs.

- Requires the Organ and Tissue Procurement and Transplantation Advisory Board to submit specified recommendations to the AHCA by September 1, 2021.

The bill has an effective date of July 1, 2020.

## **II. Present Situation:**

### **Organ Transplant Advisory Council**

Section 765.53, F.S., establishes the Organ Transplant Advisory Council (OTAC) to consist of 12 physician<sup>1</sup> members who are appointed to represent the interests of the public and the clients of the Department of Health (DOH) or the AHCA. All members are appointed by the Secretary of Health Care Administration for two-year terms. The OTAC is responsible for recommending indications for adult and pediatric organ transplants to the AHCA and formulating guidelines and standards for organ transplants and for the development of End Stage Organ Disease and Tissue/Organ Transplant programs. The OTAC's recommendations, guidelines, and standards are limited in applicability to only those health programs funded through the AHCA.

The OTAC met 22 times with its first meeting held on August 27, 2007 and its last meeting held on April 14, 2015. Most actions of the OTAC revolved around approving guidelines for organ transplantations and reviewing and approving hospital transplant program applications for recommendation to the AHCA.

### **Organ and Tissue Procurement and Transplantation Advisory Board (Board)**

The Organ and Tissue Procurement and Transplantation Advisory Board consists of 14 members appointed by the Secretary for three-year terms.<sup>2</sup> The Board is tasked with:

- Assisting the AHCA in the development of necessary professional qualifications, including, but not limited to, the education, training, and performance of persons engaged in organ and tissue procurement, processing, preservation, and distribution for transplantation;
- Assisting the AHCA in monitoring the appropriate expenses associated with organ and tissue procurement, processing, and distribution for transplantation and developing methodologies to ensure uniform statewide reporting of data to facilitate the accurate and timely evaluation of the organ and tissue procurement and transplantation system;
- Providing assistance to the Florida Medical Examiners Commission in the development of appropriate procedures and protocols to ensure the continued improvement in the approval and release of potential donors by the district medical examiners and associate medical examiners;
- Developing with and recommending to the AHCA the necessary procedures and protocols required to assure that all residents of this state have reasonable access to available organ and tissue transplantation therapy and that residents of this state can be reasonably assured that the statewide procurement transplantation system is able to fulfill their organ and tissue requirements within the limits of the available supply and according to the severity of their medical condition and need; and

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<sup>1</sup> Licensed under chs. 458 and 459, F.S.

<sup>2</sup> Section 765.543, F.S.

- Developing with and recommending to the AHCA any changes to the laws of this state or administrative rules or procedures to ensure that the statewide organ and tissue procurement and transplantation system is able to function smoothly, effectively, and efficiently, in accordance with the Federal Anatomical Gift Act and in a manner that assures the residents of this state that no person or entity profits from the altruistic voluntary donation of organs or tissues.

The Board met five times between September of 2011 and January of 2014. The Board held its last meeting to conduct general business of the advisory board, including a review and discussion on recommendations for changes to the laws and administrative rules related to organ and tissue procurement activities in Florida.<sup>3</sup>

**Licensure Requirements**

*Volume requirements:*<sup>4, 5</sup>

Liver	5 transplants over 2 years
Kidneys	Adult – 15 transplants per year Pediatric – 5 transplants per year
Pediatric bone marrow	10 transplants per year of each type performed (allogenic or autologous)
Adult bone marrow	10 transplants per year of each type performed (allogenic or autologous)
Lung, Heart and Lung, Pancreas and Islet Cells, and Intestines	None
Proposed organ transplant volume requirements in 59A-3.246, F.A.R.	Each licensed organ transplant program must perform a minimum of 10 transplants per year averaged over 2 years. Hospitals providing adult and pediatric programs must meet the minimum volume requirement for each age group separately.

Currently, standards for licensure for organ transplant programs in Florida can be found in AHCA Rule 59C-1.044, F.A.C.<sup>6</sup> These standards include:

- General staffing requirements:
  - A staff of physicians with expertise in caring for patients having end-stage disease requiring transplantation. The staff must have medical specialties or sub-specialties appropriate for the type of transplantation program to be established. A physician having one year of experience in the management of infectious diseases in the transplant patient must be a member of the transplant team. The program must employ a transplant

<sup>3</sup> See meeting notice 14072583 in the Florida Administrative Register. Additional meeting minutes and recommendations are available at [https://ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Lab\\_HomeServ/OrganTissueBoard.shtml](https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Lab_HomeServ/OrganTissueBoard.shtml) (last visited on Jan. 28, 2020).

<sup>4</sup> Projected prior to grant of licensure.

<sup>5</sup> Volume requirements for liver and kidney transplants are included in the CON portions of the rule.

<sup>6</sup> For a discussion of the licensure requirements in a CON rule versus a licensure rule, see the CON overview below.

- physician, and a transplant surgeon, if applicable, as defined by the United Network for Organ Sharing (UNOS), June 1994.
- A program director who has a minimum of one year of formal training and one year of experience at a transplantation program for the same type of organ transplantation program proposed.
  - A staff of practitioners with experience in the special needs of children if pediatric transplantations are performed;
  - A staff of nurses and nurse practitioners with experience in the care of chronically ill patients and their families;
  - Contractual agreements with consultants who have expertise in blood banking and are capable of meeting the unique needs of transplant patients on a long-term basis;
  - Nutritionists having expertise in the nutritional needs of transplant patients;
  - Respiratory therapists having expertise in the needs of transplant patients; and
  - Social workers, psychologists, psychiatrists, and other individuals skilled in performing comprehensive psychological assessments, counselling patients, and families of patients, providing assistance with financial arrangements, and making arrangements for use of community resources.
- Coordination of services:
    - Staff and other resources necessary to care for a patient's chronic illness prior to transplantation, during transplantation, and in the post-operative period. Services and facilities for inpatient and outpatient care must be available on a 24-hour basis.
    - If cadaveric transplantation will be part of the transplantation program, a written agreement with an organ acquisition center for organ procurement is required. A system by which 24-hour call can be maintained for assessment, management, and retrieval of all referred donors, cadaver donors or organs shared by other transplant or organ procurement agencies is mandatory. Applicants for a bone marrow transplantation program are exempt from this requirement.
    - An age-appropriate (adult or pediatric) intensive care unit which includes facilities for prolonged reverse isolation when required.
    - A clinical review committee for evaluation and decision-making regarding the suitability of a transplant candidate.
    - Written protocols for patient care for each type of organ transplantation program including, at a minimum, patient selection criteria for patient management and evaluation during the pre-hospital, in-hospital, and immediate post-discharge phases of the program.
    - Detailed therapeutic and evaluative procedures for the acute and long term management of each transplant program patient, including the management of commonly encountered complications.
    - Equipment for cooling, flushing, and transporting organs. If cadaveric transplants are performed, equipment for organ preservation through mechanical perfusion is necessary. Applicants for a bone marrow transplantation program are exempt from this requirement. This requirement may be met through an agreement with an organ procurement agency.
    - An onsite tissue-typing laboratory or a contractual arrangement with an outside laboratory within the state which meets the requirements of the American Society of Histocompatibility.
    - Pathology services having the capability of studying and promptly reporting a patient's response to the organ transplantation surgery, and analyzing appropriate biopsy material.
    - Blood banking facilities.

- A program for the education and training of staff regarding the special care of transplantation patients.
- Education programs for patients, their families, and a patient's primary care physician regarding after-care for transplantation patients.
- Specialized requirements:
  - For heart transplant programs:
    - A board-certified or board-eligible adult cardiologist, or, in the case of a pediatric heart transplantation program, a board-certified or board-eligible pediatric cardiologist;
    - An anesthesiologist experienced in both open heart surgery and heart transplantation; and
    - A one-bed isolation room in an age-appropriate intensive care unit.
  - For liver transplant programs:
    - A department of gastroenterology, including clinics, and adequately equipped procedure rooms;
    - Radiology services to provide complex biliary procedures, including transhepatic cholangiography, portal venography, and arteriography;
    - A laboratory having the capability of performing and promptly reporting the results of liver function tests as well as required chemistry, hematology, and virology tests; and
    - A patient convalescent unit for further monitoring of patient progress for approximately one month post-hospital discharge following liver transplantation.
    - In addition to the general staffing requirements for all transplantation programs, program staff for liver transplantation programs must be trained in the care of patients with hepatic diseases, and liver transplantation.
  - For kidney transplant programs:
    - Coordination of services requirements:
      - Inpatient services must be available and must include renal dialysis and pre- and post operative care. There must be 24-hour availability of onsite dialysis under the supervision of a board-certified or board-eligible nephrologist. If pediatric patients are served, a separate pediatric dialysis unit must be established.
      - Outpatient services must be available and must include renal dialysis services and ambulatory renal clinic services.
      - Ancillary services must include pre-dialysis, dialysis, and post transplantation nutritional services; bacteriologic, biochemical, and pathological services; radiologic services; and nursing services having the capability of monitoring and support during dialysis and assisting with home care including vascular access and home dialysis management, when applicable.
    - Staffing requirements for adult programs:
      - The kidney transplantation program must be under the direction of a physician having experience in physiology, immunology, and immuno-suppressive therapy relevant to kidney transplantation.
      - The transplant surgeon must be board-certified in surgery or a surgical subspecialty and must have a minimum of 18 months training in a transplant center.

- The transplant team performing kidney transplantation must include physicians who are board-certified or board-eligible in the areas of anesthesiology, nephrology, psychiatry, vascular surgery, and urology.
- Additional support personnel which must be available include a nephrology nurse with experience in nursing care of patients with permanent kidney failure, and a renal dietician.
- A laboratory with the capability of performing and promptly reporting bacteriologic, biochemical, and pathologic analysis.
- An anesthesiologist experienced in kidney transplantation.
- Staffing requirements for pediatric programs:
  - A medical director who is sub-board-certified or sub-board-eligible in pediatric nephrology.
  - A dialysis unit head nurse with special training and expertise in pediatric dialysis.
  - Nurse staffing at a nurse-to-patient ratio of one-to-one in the pediatric dialysis unit.
  - A registered dietician with expertise in nutritional needs of children with chronic renal disease.
  - A surgeon with experience in pediatric renal transplantation.
  - A radiology service with specialized equipment for obtaining X-rays on pediatric patients.
  - Education services to include home and hospital programs to ensure minimal interruption in school education.
- For bone marrow transplant programs:
  - Staffing Requirements:
    - A program director who is a board certified hematologist or oncologist having experience in the treatment and management of pediatric acute oncological cases involving high dose chemotherapy or high dose radiation therapy. The program director must have formal training in pediatric bone marrow transplantation;
    - Clinical nurses having experience in the care of critically ill immuno-suppressed patients. Nursing staff must be dedicated full time to the program;
    - An interdisciplinary transplantation team having expertise in hematology, oncology, immunologic diseases, neoplastic diseases, including hematopoietic and lymphopoietic malignancies, and non-neoplastic disorders. The team must direct permanent follow-up care of the bone marrow transplantation patients, including the maintenance of immunosuppressive therapy and treatment of complications;
    - A radiation therapy division onsite which is capable of sub-lethal x-irradiation, bone marrow ablation, and total lymphoid irradiation. The division must be under the direction of a board-certified radiation oncologist;
    - An ongoing research program that is integrated either within the hospital or by written agreement with a bone marrow transplantation center operated by a teaching hospital. The program must include outcome monitoring and long-term patient follow-up; and
    - An established research-oriented oncology program.
  - Pediatric allogenic bone marrow transplant requirements:
    - A laboratory equipped to handle studies including the use of monoclonal antibodies, if this procedure is employed by the hospital, or T-cell depletion,

- separation of lymphocyte and hematological cell subpopulations and their removal for prevention of graft versus host disease. This requirement may be met through contractual arrangements;
- An onsite laboratory equipped for the evaluation and cryopreservation of bone marrow;
  - An age-appropriate patient convalescent facility to provide a temporary residence setting for transplant patients during the prolonged convalescence; and
  - An age-appropriate outpatient unit for close supervision of discharged patients.
- Adult allogenic bone marrow transplant program requirements:
    - Inpatient transplantation units for post-transplant hospitalization. Post-transplantation care must be provided in a laminar air flow room; or in a private room with positive pressure, reverse isolation procedures, and terminal high efficiency particulate aerosol filtration on air blowers. The designated transplant unit must have a minimum of two beds. This unit can be part of a facility that also manages patients with leukemia or similar disorders;
    - A radiation therapy division onsite which is capable of sub-lethal x-irradiation, bone marrow ablation, and total lymphoid irradiation. The division must be under the direction of a board-certified radiation oncologist;
    - A laboratory equipped to handle studies including the use of monoclonal antibodies, if this procedure is employed by the hospital, or T-cell depletion, separation of lymphocyte and hematological cell subpopulations and their removal for prevention of graft versus host disease. This requirement may be met through contractual arrangements;
    - An onsite laboratory equipped for the evaluation and cryopreservation of bone marrow;
    - An ongoing research program that is integrated either within the hospital or by written agreement with a bone marrow transplantation center operated by a teaching hospital. The program must include outcome monitoring and long-term patient follow-up;
    - An established research-oriented oncology program;
    - A patient convalescent facility to provide a temporary residence setting for transplant patients during the prolonged convalescence; and
    - An outpatient unit for close supervision of discharged patients.
  - Adult autologous bone marrow transplant program requirements:
    - Inpatient transplantation units for post-transplant hospitalization. Post-transplantation care must be provided in a laminar air flow room; or in a private room with positive pressure, reverse isolation procedures, and terminal high efficiency particulate aerosol filtration on air blowers. The designated transplant unit must have a minimum of two beds. This unit can be part of a facility that also manages patients with leukemia or similar disorders;
    - A radiation therapy division onsite which is capable of sub-lethal x-irradiation and total lymphoid irradiation. The division must be under the direction of a board-certified radiation oncologist;
    - An ongoing research program that is integrated either within the hospital or by written agreement with a bone marrow transplantation center operated by a teaching hospital; or the applicant may enter into an agreement with an outpatient provider having a research program, as defined in this rule. Under the agreement,

the outpatient research program may perform specified outpatient phases of adult autologous bone marrow transplantation, including blood screening tests, mobilization of stem cells, stem cell rescue, chemotherapy, and reinfusion of stem cells; and

- An established research-oriented oncology program.
- Lung, Heart and Lung, Pancreas and Islet Cells, and Intestines transplant programs have no additional requirements.

### **Ongoing Organ Transplant Volume Requirements**

Currently, under provisions in ch. 2019-136, L.O.F.,<sup>7</sup> licensure of organ transplantation programs in Florida is governed by Rule 59C-1.044, F.A.C., until the AHCA adopts licensure rules for organ transplant programs. As of January 23, 2020, the AHCA has begun the process of amending Rule 59A-3.246, F.A.C., to incorporate licensure requirements for organ transplant programs but no changes have yet been adopted. Additionally, the Federal Centers for Medicare and Medicaid Services recently repealed ongoing volume requirements for organ transplant centers to participate in the Medicaid and Medicare.<sup>8</sup>

### **HIV Positive Organ, Blood, Plasma, Skin, and Tissue Donation**

Due to increased life expectancy, the number of HIV-positive persons in need of organ transplants has increased.<sup>9</sup> However, the number of people on the organ transplant waiting list far outweighs the number of available organs.<sup>10</sup> This shortage disproportionately affects persons with HIV, who have a higher mortality rate than persons without HIV on the organ transplant waiting list.<sup>11</sup>

For decades, federal law prohibited persons with HIV from donating organs for transplantation, including to HIV-positive recipients.<sup>12</sup> However, in 2013, the HIV Organ Policy Equity (HOPE) Act legalized HIV-positive organ donations for transplantation into HIV-positive candidates under approved research protocols designed to evaluate the feasibility, effectiveness, and safety of such organ transplants.<sup>13</sup>

Although authorized by federal law, it is a third-degree felony in Florida for an HIV-positive person to donate blood, plasma, organs, skin, or other human tissue when he or she knew of the HIV infection and was informed that transmission could occur through such donation.<sup>14</sup>

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<sup>7</sup> Chapter 2019-136, L.O.F., eliminated Florida's certificate of need program for certain hospitals and tertiary services, including organ transplants. Under the provisions of the act, the AHCA's CON rules remain effective for licensure purposes until the AHCA replaces them with licensure rules.

<sup>8</sup> 83 FR 47686

<sup>9</sup> Christine Durand, M.D., *The Transformation of Transplantation*, HIV Specialist (July 2018), available at [https://aahivm.org/wp-content/uploads/2018/07/FINALHIVspecialist\\_July2018FINAL-1.pdf](https://aahivm.org/wp-content/uploads/2018/07/FINALHIVspecialist_July2018FINAL-1.pdf) (last visited Feb. 26, 2020).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> UNOS, *At Two Years, HOPE Act Still Offering Hope* (December 1, 2017), available at <https://unos.org/at-two-years-hope-act-still-offering-hope/> (last visited Feb. 26, 2020).

<sup>13</sup> *Id.*

<sup>14</sup> Section. 381.0041(11)(b), F.S.

### Florida Sovereign Immunity

Generally, the state has sovereign immunity from liabilities and lawsuits.<sup>15</sup> The Legislature has waived sovereign immunity for certain liabilities from the state, including tort claims for negligence.<sup>16</sup> However, individual state actors and employees are not personally liable unless they act in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Moreover, there are limits on the collectability of a judgments of \$200,000 limit per claimant and \$300,000 limit per incident unless the Legislature approves a claim bill authorizing additional payments.

Sovereign immunity is not limited to government agencies. Some private entities, such as Community Based Care Agencies contracted with the Department of Children and Families,<sup>17</sup> share sovereign immunity as corporations primarily acting as instrumentalities of the state or its agencies.

Some advisory boards having both private and government purpose share sovereign immunity. The Florida Virtual School, for example, is governed by a board of trustees entitled to sovereign immunity.<sup>18</sup> The Board acts as the governing board of the Florida Virtual Schools and has the power to generate revenue and supervise employment matters. Similarly, the Nurse Licensure Compact, a national compact of different states making rules for multi-state nurse licensures, enjoys sovereign immunity under Florida law.<sup>19</sup>

### III. Effect of Proposed Changes:

This bill substantially amends and creates several sections of law relating to organ donations.

**Section 1** amends s. 381.0041, F.S., to authorize an HIV-positive patient to donate blood, plasma, organs, skin, or other human tissue to a HIV-positive recipient who knows the donor is HIV positive.

**Section 2** amends s. 395.1055, F.S., to require the AHCA to adopt in rule specified minimum volume standards for organ transplantation programs as follows:

- For heart transplants, performance of at least 12 such transplants per year.
- For liver transplants, performance of at least five such transplants per biennium.
- For adult kidney transplants, performance of at least 15 such transplants per biennium.
- For pediatric kidney transplants, performance of at least five such transplants per biennium.
- For adult allogenic and autologous bone marrow transplants, performance of at least 10 transplants per year of each such transplant it offers.
- For pediatric allogenic and autologous bone marrow transplants, performance of at least 10 transplants per year of each such transplant it offers.
- For any other transplant type not specified in subparagraphs 1.-6., performance of at least 10 transplants of such transplant per year.

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<sup>15</sup> FLA. CONST. art. X, s. 13.

<sup>16</sup> Section 768.28, F.S.

<sup>17</sup> Section 409.2564(6), F.S.

<sup>18</sup> Section 1002.37, F.S.

<sup>19</sup> Section 464.0095, F.S.

The minimum volume standards remain in effect until the AHCA has adopted rules based on recommendations from the Organ Transplant Technical Advisory Council.

**Section 3** amends s. 627.6045, F.S., to prohibit a health insurance policy from limiting or excluding coverage for a living organ donor under a preexisting condition provision.

**Section 5** amends s. 765.5155, F.S., to expand the organ donation education program to include federal laws and information on the organ donation and transplantation process.

**Sections 4 and 6** amend ss. 765.514 and 765.517, F.S., respectively, to prohibit an organ procurement organization from charging a deceased donor or his or her family any fee for services relating to the procurement or donation of the donor's organs and to add a statement on the uniform donor card form that neither the donor nor his or her family is responsible for the payment of any fees associated with services relating to the procurement or donation of the donor's organs, tissues, or eyes.

**Section 7** creates s. 765.5175, F.S., to prohibit an organ transplantation facility from charging a living donor or his or her family member, other than the recipient of the organ, any fee for services relating to the procurement or donation of his or her organs.

**Section 8** revises s. 763.53, F.S., to expand the duties of the existing OTAC and rename it as the Organ Transplant Technical Advisory Council (Council).

The bill establishes the Council within the AHCA to develop standards for quality and outcomes at adult and pediatric organ transplant programs. The Council is also tasked with advising the AHCA and the Legislature regarding the cost savings, trends, research, and protocols and procedures relating to organ donation and transplantation, including the availability of organs for donation and access to organ transplants for persons having disabilities. The bill specifies that unless otherwise stated, the Council must operate in accordance with s. 20.052, F.S.

The bill establishes the membership of the council to include eight voting members appointed by the CEO of each of the following hospitals:

- Jackson Memorial Hospital in Miami.
- Tampa General Hospital in Tampa.
- University of Florida Health Shands Hospital in Gainesville.
- AdventHealth Orlando in Orlando.
- Mayo Clinic in Jacksonville.
- Cleveland Clinic Florida in Weston.
- Largo Medical Center in Largo.
- Broward Health Medical Center in Fort Lauderdale

Each such member must have technical expertise in adult or pediatric organ transplantation and must be an organ transplant surgeon licensed under chs. 458 or 459, F.S., or an organ transplant nurse coordinator licensed under ch. 464, F.S. Each such member's appointment is contingent upon the appointing hospital's compliance with ch. 395, F.S., and related rules. If the hospital is

noncompliant, the member may serve only as a nonvoting member until the hospital comes into compliance.

Additionally, the Secretary of the AHCA, or his or her designee, must serve as the chair and a nonvoting member of the Council and must appoint the following to serve as voting members:

- The State Surgeon General or his or her designee.
- A parent of a child who has had an organ transplant.
- An adult who has had an organ transplant.
- An adult patient who is on an organ transplant waiting list.
- A representative from an organ procurement organization.
- An administrator of an organ transplant program.
- A licensed physician from each of the following organ transplantation areas:
  - Kidneys.
  - Lungs.
  - Heart.
  - Liver.
  - Pancreas.

Voting members of the Council are required to reflect the ethnic and gender diversity of the state. Members serve without compensation but may be reimbursed for per diem and travel expenses. Members of the Council who are performing their duties in good faith are considered agents of the state for the purpose of sovereign immunity. Members may be reappointed and each vacancy may be filled in the same manner as it was originally filled.

The Council must meet at least twice annually and additionally upon call of the chair. The meetings may be held using any method of telecommunications.

The Council's duties include:

- Recommending to the AHCA and the Legislature standards for quality care of adult and pediatric organ transplant patients including:
  - Recommendations on minimum volume of transplants by organ type;
  - Personnel;
  - Physical plant;
  - Equipment;
  - Transportation; and
  - Data reporting for hospitals that perform organ transplants.
- Reporting its recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Secretary of Health Care Administration, and the State Surgeon General by October 1, 2021.

Additionally, the Council may, but is not required to, further advise the AHCA and the Legislature regarding research focused on improving overall organ availability. Voting members may only vote on a specific recommendation if the hospital which the member represents has a transplant program for that type of organ.

Based on the recommendations of the Council, the AHCA must develop and adopt rules for organ transplant programs so that such rules include, at a minimum:

- Quality of care standards for adult and pediatric organ transplants, including minimum volume thresholds by organ type, personnel, physical plant, equipment, transportation, and data reporting.
- Outcome and survival rate standards that meet or exceed nationally established levels of performance in organ transplantation.
- Specific steps to be taken by the AHCA and licensed facilities when the facilities do not meet the volume, outcome, or survival rate standards within a specified timeframe that includes the time required for detailed case reviews and the development and implementation of corrective action plans.

This requirement to adopt or amend rules is repealed on July 1, 2030.

**Section 9** amends s. 765.543, F.S., to require the Organ and Tissue Procurement and Transplantation Board to, by September 1, 2021, submit to the AHCA recommendations that address:

- The frequency of communication between patients and organ transplant coordinators.
- The monitoring of each organ transplantation facility and the annual reporting and publication of relevant information regarding the statewide number of patients placed on waiting lists and the number of patients who receive transplants, aggregated by the facility.
- The establishment of a coordinated communication system between organ transplantation facilities and living organ donors for the purpose of minimizing the cost and time required for duplicative lab tests, including the sharing of lab results between facilities.
- The potential incentives for organ transplantation facilities that may be necessary to increase organ donation in this state.
- The evaluation and encouragement of an efficient living organ donor process.
- The potential opportunities and incentives for organ transplantation research.
- The best practices for organ transplantation facilities and organ procurement organizations which promote the most efficient and effective outcomes for patients.
- The monitoring of organ procurement organizations.

Additionally, the bill specifies that the Board must collaborate with other relevant public or private entities in the development of necessary professional qualifications for persons engaged various facets of organ and tissue procurement.

**Section 10** creates s. 765.548, F.S., to require the AHCA to:

- Monitor the operation of each organ transplantation facility and organ procurement organization located in this state.
- Develop uniform statewide rules regarding organ donations, which:
  - Must include the requirement that each hospital that performs organ transplants designate at least one employee or representative of the hospital who is educated on the protocols of the hospital and federal and state regulations regarding organ donation, to provide a clear explanation of such subjects to any patient, or a patient's representative, who is considering posthumous or living organ donation; and
  - May include, but need not be limited to, procedures for maintaining a coordinated system of communication between organ transplantation facilities.

- Evaluate the current protocols and procedures used by organ transplantation facilities and make recommendations for improving such protocols and procedures.
- Establish annual reporting requirements for organ transplantation facilities and organ procurement organizations.
- In consultation with the state Board of Education and the contractor procured by the AHCA pursuant to s. 765.5155, F.S., develop a curriculum for educating high school students regarding the laws of this state relating to organ donation.
- Publish any data and other relevant information to adequately inform patients and potential donors about organ donation and organ transplantation by December 1, 2021, and each year thereafter.

**Section 11** amends s. 409.815, F.S., to make a conforming change

**Section 12** provides that the bill has an effective date of July 1, 2020.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:**

CS/CS/CS/SB 1516 may have an indeterminate negative fiscal impact on the AHCA due to the requirement to reimburse Council members for per diem and travel expenses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 381.0041, 395.1055, 627.6045, 765.514, 765.5155, 765.517, 765.53, 765.543, 765.548, and 409.815.

The bill creates s. 765.5175 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS/CS by Rules on February 26, 2020:**

The CS:

- Places the substance of CS/SB 626 into the bill which allows HIV positive blood, plasma, organ, and other human tissue donors to donate to recipients who are also HIV positive and who know the donor is HIV positive.
- Establishes ongoing minimum volume requirements in licensure for organ transplant programs that match the current minimum volume requirements established in AHCA's CON rules.
- Clarifies language regarding charges to living donors and family members, as opposed to a deceased donor or his or her family. Makes clarifying changes to the Organ Transplant Advisory Council.
- Makes other technical and clarifying changes.

**CS/CS by Judiciary on February 11, 2020:**

The CS:

- Clarifies that an organ transplantation facility may not charge a donor, deceased donor, or his or her family for services relating to the procurement or donation of the deceased donors organs.
- Requires the Organ Transplant Technical Advisory Council to advise the Agency for Healthcare Administration and the Legislature on organ donor benefits and access to organ transplants for persons having disabilities.

- Increases the membership of the Organ Transplant Technical Advisory Council to include a representative from an organ procurement organization, administrator of an organ transplant program.

**CS by Health Policy on January 27, 2020:**

The CS changes the title of the bill from “an act relating to organ transplant technical Advisory Council to “an act relating to organ donation” and amends and creates additional sections of law relating to organ donation as follows:

- Section 627.6045, F.S., is amended to prohibit a health insurance policy from limiting or excluding coverage for a living organ donor under a preexisting condition provision.
- Sections 765.517 and 765.514, F.S., are amended to prohibit an organ transplantation facility from charging an organ donor or his or her family any fee for services relating to the procurement or donation of the donor’s organs and to add a statement on the uniform donor card form that neither the donor nor his or her family is responsible for the payment of any fees associated with services relating to the procurement or donation of the donor’s organs, tissues, or eyes.
- Section 765.5155, F.S., is amended to expand the organ donation education program to include federal laws and information on the organ donation and transplantation process.
- Section 765.543, F.S., is amended to require the Organ and Tissue Procurement and Transplantation Board to, by September 1, 2021, submit to the AHCA recommendations that address:
  - The frequency of communication between patients and organ transplant coordinators.
  - The monitoring of each organ transplantation facility and the annual reporting and publication of relevant information regarding the statewide number of patients placed on waiting lists and the number of patients who receive transplants, aggregated by the facility.
  - The establishment of a coordinated communication system between organ transplantation facilities and living organ donors for the purpose of minimizing the cost and time required for duplicative lab tests, including the sharing of lab results between facilities.
  - The potential incentives for organ transplantation facilities that may be necessary to increase organ donation in this state.
  - The creation of a more efficient regional or statewide living organ donor process.
  - The potential opportunities and incentives for organ transplantation research.
  - The best practices for organ transplantation facilities and organ procurement organizations which promote the most efficient and effective outcomes for patients.
  - The monitoring of organ procurement organizations.
- Section 765.548, F.S., is created to require the AHCA to:
  - Monitor the operation of each organ transplantation facility and organ procurement organization located in this state.
  - Develop uniform statewide rules regarding organ donations, which must include the requirement that each hospital designate at least one employee or representative of the hospital who is educated on the protocols of the hospital and

federal and state regulations regarding organ donation, to provide a clear explanation of such subjects to any patient, or a patient's representative, who is considering posthumous or living organ donation; and may include, but need not be limited to, procedures for maintaining a coordinated system of communication between organ transplantation facilities.

- Evaluate the current protocols and procedures used by organ transplantation facilities and make recommendations for improving such protocols and procedures.
- Establish annual reporting requirements for organ transplantation facilities and organ procurement organizations.
- In consultation with the state Board of Education and the contractor procured by the AHCA pursuant to s. 765.5155, F.S., develop a curriculum for educating high school students regarding the laws of this state relating to organ donation.
- Publish any data and other relevant information to adequately inform patients and potential donors about organ donation and organ transplantation by December 1, 2021, and each year thereafter.

In addition, the CS amends requirements for the Council to:

- Require the Council to advise the AHCA and the Legislature regarding the cost savings, trends, research, and protocols and procedures relating to organ donation and transplantation, including the availability of organs for donation.
- Revise the membership of the Council to:
  - Allow the appointment of organ transplant nurses, in addition to physicians;
  - Reduce the members appointed by hospitals to eight;<sup>20</sup> and
  - Grant voting rights to members of the Council appointed by the secretary of the AHCA and revise the list of members appointed by the secretary;<sup>21</sup> and
  - Require voting members to reflect the ethnic and gender diversity of the state;
- Revise the duties of the Council to:
  - Require recommendations be presented to the Legislature as well as the AHCA;
  - Eliminate the duty to develop recommendations for improving education, outreach, and communication between hospitals, patients, and the public, with an emphasis on potential and prospective donors, including recommendations for clear explanations to the public of relevant laws, rules, and regulations; requirements for coordinated communication between hospitals, between hospitals and patients, and between hospitals and prospective donors; and recommendations for providing education to the public on the organ donation process, with an emphasis on educating potential living donors; and
  - Allow the Council to advise the AHCA and the Legislature regarding research focused on improving overall organ availability.

<sup>20</sup> Memorial Regional hospital in Hollywood, Halifax Health Medical Center in Daytona Beach, Sacred Heart Hospital in Pensacola, H. Lee Moffitt cancer Center and Research Institute in Tampa, and the University of Miami Hospital in Fort Lauderdale are removed from the list while Broward Health Medical Center in Fort Lauderdale is added.

<sup>21</sup> Representatives of the Florida Hospital Association, the Safety Net Hospital Alliance of Florida, and HCA Healthcare are removed from the underlying bill while an adult patient who is on an organ transplant waiting list and licensed physicians who specialize in organ transplantation of the kidneys, lungs, liver, heart, and pancreas are added.

The CS also revises the automatic repeal date of the requirement that the AHCA adopt rules based on the Councils recommendations from an automatic repeal when the AHCA adopts such rules to a repeal on the set date of July 1, 2030.

**Amendments:**

None.

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

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476992

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2020	.	
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The Committee on Rules (Harrell) recommended the following:

**Senate Amendment (with title amendment)**

1  
2  
3 Before line 47  
4 insert:

5 Section 1. Paragraph (b) of subsection (11) of section  
6 381.0041, Florida Statutes, is amended to read:

7 381.0041 Donation and transfer of human tissue; testing  
8 requirements.-

9 (11)

10 (b) Any person who has human immunodeficiency virus  
11 infection, who knows he or she is infected with human



476992

12 immunodeficiency virus, and who has been informed that he or she  
13 may communicate this disease by donating blood, plasma, organs,  
14 skin, or other human tissue who donates blood, plasma, organs,  
15 skin, or other human tissue for use in another person commits ~~is~~  
16 guilty of a felony of the third degree, punishable as provided  
17 in s. 775.082, s. 775.083, or s. 775.084. This paragraph does  
18 not apply if the donation is made specifically for a recipient  
19 who is infected with human immunodeficiency virus and who knows  
20 that the donor is infected with human immunodeficiency virus.

21  
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24       Between lines 2 and 3

25 insert:

26       381.0041, F.S.; providing that it is a felony for  
27       certain persons who are infected with human  
28       immunodeficiency virus to donate blood, plasma,  
29       organs, skin, or other human tissue for use in another  
30       person, with an exception; amending s.



522354

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2020	.	
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The Committee on Rules (Harrell) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 47 - 60  
and insert:

Section 1. Paragraph (j) is added to subsection (1) of  
section 395.1055, Florida Statutes, to read:

395.1055 Rules and enforcement.—

(1) The agency shall adopt rules pursuant to ss. 120.536(1)  
and 120.54 to implement the provisions of this part, which shall  
include reasonable and fair minimum standards for ensuring that:

(j) Hospitals providing organ transplants meet the



522354

- 12 following minimum volume of transplants by organ type:  
13 1. For heart transplants, performance of at least 12 such  
14 transplants per year.  
15 2. For liver transplants, performance of at least 5 such  
16 transplants per biennium.  
17 3. For adult kidney transplants, performance of at least 15  
18 such transplants per biennium.  
19 4. For pediatric kidney transplants, performance of at  
20 least 5 such transplants per biennium.  
21 5. For adult allogenic and autologous bone marrow  
22 transplants, performance of at least 10 transplants per year of  
23 each such transplant it offers.  
24 6. For pediatric allogenic and autologous bone marrow  
25 transplants, performance of at least 10 transplants per year of  
26 each such transplant it offers.  
27 7. For any other transplant type not specified in  
28 subparagraphs 1.-6., performance of at least 10 transplants of  
29 such transplant per year.

30  
31 This paragraph expires upon the agency's adoption of rules  
32 pursuant to s. 765.53(7).  
33

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

35 And the title is amended as follows:

36 Delete lines 3 - 5

37 and insert:

38 395.1055, F.S.; requiring the Agency for Health Care  
39 Administration to adopt by rule specified minimum  
40 standards for certain organ transplants; providing for



522354

41 the expiration of the requirement upon the adoption of  
42 specified rules; amending s. 627.6045,



664054

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2020	.	
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The Committee on Rules (Harrell) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 136 - 189  
and insert:  
procurement organization may not charge a deceased donor or his  
or her family member any fee for services relating to the  
procurement or donation of the deceased donor's organs.

Section 6. Section 765.5175, Florida Statutes, is created  
to read:

765.5175 Rights and duties of living donors.—An organ  
transplantation facility may not charge a living donor or his or



664054

12 her family member, other than a family member who is the  
13 recipient of the organ, any fee for services relating to the  
14 procurement or donation of his or her organs.

15 Section 7. Section 765.53, Florida Statutes, is amended to  
16 read:

17 (Substantial rewording of section. See  
18 s. 765.53, F.S., for present text.)

19 765.53 Organ Transplant Technical Advisory Council.—

20 (1) CREATION AND PURPOSE.—The Organ Transplant Technical  
21 Advisory Council, an advisory council as defined in s. 20.03, is  
22 created within the agency to develop standards for measuring  
23 quality and outcomes of adult and pediatric organ transplant  
24 programs. In order to increase the number of organs available  
25 for transplantation in this state, the council shall advise the  
26 agency and the Legislature regarding the cost savings, trends,  
27 research, and protocols and procedures relating to organ  
28 donation and transplantation, including the availability of  
29 organs for donation, organ donor benefits, and access to organ  
30 transplants for persons with disabilities. Unless expressly  
31 provided otherwise in this section, the council shall operate in  
32 a manner consistent with s. 20.052.

33 (2) MEMBERS.—

34 (a) Voting members of the council must have technical  
35 expertise in adult or pediatric organ transplantation. The chief  
36 executive officers of the following organ transplantation  
37 facilities shall each appoint one representative, who must be an  
38 organ transplant nurse coordinator licensed under chapter 464 or  
39 an organ transplant surgeon licensed under chapter 458 or  
40 chapter 459, to serve as a voting member of the council:



664054

- 41       1. Jackson Memorial Hospital in Miami.  
42       2. Tampa General Hospital in Tampa.  
43       3. University of Florida Health Shands Hospital in  
44 Gainesville.  
45       4. AdventHealth Orlando in Orlando.  
46       5. Mayo Clinic in Jacksonville.  
47       6. Cleveland Clinic Florida in Weston.  
48       7. Largo Medical Center in Largo.  
49       8. Broward Health Medical Center in Fort Lauderdale.  
50       (b) Voting members of the council must reflect the ethnic  
51 and gender diversity of this state.  
52       (c) The Secretary of Health Care Administration, or his or  
53 her designee, shall serve as the chair and as a nonvoting member  
54 of the council.  
55       (d) The Secretary of Health Care Administration shall  
56 appoint the following individuals to serve as voting members of  
57 the council:  
58       1. The State Surgeon General or his or her designee.  
59       2. A parent of a child who has had an organ transplant.  
60       3. An adult who has had an organ transplant.  
61       4. An adult patient who is on an organ transplant waiting  
62 list.  
63       5. A licensed organ transplant

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

66 And the title is amended as follows:

67       Delete lines 17 - 19

68 and insert:

69       procurement organization from charging a deceased



664054

70 donor or his or her family member any fee for services  
71 relating to the procurement or donation of organs;  
72 creating s. 765.5175, F.S.; prohibiting an organ  
73 transplantation facility from charging a living donor  
74 or his or her family member any fee for services  
75 relating to the procurement or donation of organs,  
76 with an exception; amending s.



219292

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2020	.	
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The Committee on Rules (Harrell) recommended the following:

**Senate Amendment**

Delete lines 310 - 327  
and insert:

5. The evaluation and encouragement of an efficient living organ donor process.

6. The potential opportunities and incentives for organ transplantation research.

7. The best practices for organ transplantation facilities and organ procurement organizations which promote the most efficient and effective outcomes for patients.



219292

12           8. The monitoring of organ procurement organizations.  
13           Section 8. Section 765.548, Florida Statutes, is created to  
14 read:  
15           765.548 Duties of the agency; organ donation.—  
16           (1) The agency shall do all of the following:  
17           (a) Monitor the operation of each organ transplantation  
18 facility and organ procurement organization located in this  
19 state.  
20           (b) Develop uniform statewide rules regarding organ  
21 donations. The rules must include the requirement that each  
22 hospital that performs organ transplants designate at least one  
23 employee or representative of

By the Committees on Judiciary; and Health Policy; and Senator Harrell

590-03502-20

20201516c2

1 A bill to be entitled  
 2 An act relating to organ donation; amending s.  
 3 408.0455, F.S.; revising a provision relating to the  
 4 operation of certain rules adopted by the Agency for  
 5 Health Care Administration; amending s. 627.6045,  
 6 F.S.; prohibiting a health insurance policy from  
 7 limiting or excluding coverage solely on the basis  
 8 that an insured is a living organ donor; amending s.  
 9 765.514, F.S.; revising a written document required  
 10 for making an anatomical gift to include a specified  
 11 statement relating to the responsibility of payment  
 12 for fees associated with certain services; amending s.  
 13 765.5155, F.S.; revising the responsibilities of a  
 14 contractor procured by the agency for the purpose of  
 15 educating and informing the public about anatomical  
 16 gifts; amending s. 765.517, F.S.; prohibiting an organ  
 17 transplantation facility from charging a donor or his  
 18 or her family member any fee for services relating to  
 19 the procurement or donation of organs; amending s.  
 20 765.53, F.S.; requiring the agency to establish the  
 21 Organ Transplant Technical Advisory Council for a  
 22 specified purpose; providing for membership, meetings,  
 23 and duties of the council; requiring the council to  
 24 submit a report to the Governor, the Legislature, the  
 25 Secretary of Health Care Administration, and the State  
 26 Surgeon General by a specified date; providing for  
 27 sovereign immunity of council members under certain  
 28 circumstances; requiring the agency to adopt specified  
 29 rules based on the council's recommendations;

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

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30 providing for future legislative review and repeal of  
 31 certain provisions; amending s. 765.543, F.S.;  
 32 revising the duties of the Organ and Tissue  
 33 Procurement and Transplantation Advisory Board;  
 34 requiring the board to submit certain recommendations  
 35 to the agency by a specified date; creating s.  
 36 765.548, F.S.; providing additional duties of the  
 37 agency relating to organ transplantation facilities  
 38 and organ procurement organizations and organ donation  
 39 procedures and protocols; requiring the agency to  
 40 publish certain data and information by a specified  
 41 date and annually thereafter; amending s. 409.815,  
 42 F.S.; conforming a provision to changes made by the  
 43 act; providing an effective date.  
 44

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

46  
 47 Section 1. Section 408.0455, Florida Statutes, is amended  
 48 to read:  
 49 408.0455 Rules; pending proceedings.—The rules of the  
 50 agency in effect on June 30, 2004, ~~shall~~ remain in effect and  
 51 are shall be enforceable by the agency with respect to ss.  
 52 408.031-408.045 until such rules are repealed or amended by the  
 53 agency. Rules 59C-1.039 through 59C-1.044, Florida  
 54 Administrative Code, including, but not limited to, the minimum  
 55 volume standards for organ transplantation and neonatal  
 56 intensive care services, remain in effect for the sole purpose  
 57 of maintaining licensure requirements for the applicable  
 58 services until the agency has adopted rules for the

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59 corresponding services pursuant to s. 395.1055(1)(i), Florida  
60 Statutes 2018.

61 Section 2. Present subsections (3) and (4) of section  
62 627.6045, Florida Statutes, are redesignated as subsections (4)  
63 and (5), respectively, and a new subsection (3) is added to that  
64 section, to read:

65 627.6045 Preexisting condition.—A health insurance policy  
66 must comply with the following:

67 (3) A preexisting condition provision may not limit or  
68 exclude coverage solely on the basis that an insured is a living  
69 organ donor.

70 Section 3. Paragraph (f) of subsection (1) of section  
71 765.514, Florida Statutes, is amended to read:

72 765.514 Manner of making anatomical gifts.—

73 (1) A person may make an anatomical gift of all or part of  
74 his or her body under s. 765.512(1) by:

75 (f) Expressing a wish to donate in a document other than a  
76 will. The document must be signed by the donor in the presence  
77 of two witnesses who shall sign the document in the donor's  
78 presence. If the donor cannot sign, the document may be signed  
79 for him or her at the donor's direction and in his or her  
80 presence and the presence of two witnesses who must sign the  
81 document in the donor's presence. Delivery of the document of  
82 gift during the donor's lifetime is not necessary to make the  
83 gift valid. The following form of written document is sufficient  
84 for any person to make an anatomical gift for the purposes of  
85 this part:

86 UNIFORM DONOR CARD

87 The undersigned hereby makes this anatomical gift, if medically

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88 acceptable, to take effect on death. The words and marks below  
89 indicate my desires:

90 I give:

91 (a) .... any needed organs, tissues, or eyes;

92 (b) .... only the following organs, tissues, or eyes

93 ...[Specify the organs, tissues, or eyes]...

94 for the purpose of transplantation, therapy, medical research,  
95 or education;

96 (c) .... my body for anatomical study if needed.

97 Limitations or special wishes, if any:

98 ...(If applicable, list specific donee;

99 this must be arranged in advance with the donee.)...

100  
101 I understand that neither I nor any member of my family is  
102 responsible for the payment of any fees associated with services  
103 relating to the procurement or donation of my organs, tissues,  
104 or eyes.

105  
106 Signed by the donor and the following witnesses in the presence  
107 of each other:

108 ...(Signature of donor)... ...(Date of birth of donor)...

109 ...(Date signed)... ...(City and State)...

110 ...(Witness)... ...(Witness)...

111 ...(Address)... ...(Address)...

112 Section 4. Paragraph (b) of subsection (3) of section  
113 765.5155, Florida Statutes, is amended to read:

114 765.5155 Donor registry; education program.—

115 (3) The contractor shall be responsible for:

116 (b) A continuing program to educate and inform medical

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117 professionals, law enforcement agencies and officers, other  
 118 state and local government employees, high school students,  
 119 minorities, and the public about state and federal ~~the laws of~~  
 120 ~~this state~~ relating to anatomical gifts and the need for  
 121 anatomical gifts, including the organ donation and  
 122 transplantation process.

123 1. Existing community resources, when available, must be  
 124 used to support the program and volunteers may assist the  
 125 program to the maximum extent possible.

126 2. The contractor shall coordinate with the head of a state  
 127 agency or other political subdivision of the state, or his or  
 128 her designee, to establish convenient times, dates, and  
 129 locations for educating that entity's employees.

130 Section 5. Subsection (4) of section 765.517, Florida  
 131 Statutes, is amended to read:

132 765.517 Rights and duties at death.—

133 (4) All reasonable additional expenses incurred in the  
 134 procedures to preserve the donor's organs or tissues shall be  
 135 reimbursed by the procurement organization. An organ  
 136 transplantation facility may not charge a deceased donor or his  
 137 or her family member any fee for services relating to the  
 138 procurement or donation of the deceased donor's organs. An organ  
 139 transplantation facility may not charge a living donor for  
 140 services relating to the procurement or donation of his or her  
 141 organs.

142 Section 6. Section 765.53, Florida Statutes, is amended to  
 143 read:

144 (Substantial rewording of section. See  
 145 s. 765.53, F.S., for present text.)

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146 765.53 Organ Transplant Technical Advisory Council.—  
 147 (1) CREATION AND PURPOSE.—The Organ Transplant Technical  
 148 Advisory Council, an advisory council as defined in s. 20.03, is  
 149 created within the agency to develop standards for measuring  
 150 quality and outcomes of adult and pediatric organ transplant  
 151 programs. In order to increase the number of organs available  
 152 for transplantation in this state, the council shall advise the  
 153 agency and the Legislature regarding the cost savings, trends,  
 154 research, and protocols and procedures relating to organ  
 155 donation and transplantation, including the availability of  
 156 organs for donation, organ donor benefits, and access to organ  
 157 transplants for persons with disabilities. Unless expressly  
 158 provided otherwise in this section, the council shall operate in  
 159 a manner consistent with s. 20.052.

160 (2) MEMBERS.—

161 (a) Voting members of the council must have technical  
 162 expertise in adult or pediatric organ transplantation. The chief  
 163 executive officers of the following organ transplantation  
 164 facilities shall each appoint one representative, who must be an  
 165 organ transplant nurse coordinator licensed under chapter 464 or  
 166 an organ transplant surgeon licensed under chapter 458 or  
 167 chapter 459, to serve as a voting member of the council:

168 1. Jackson Memorial Hospital in Miami.

169 2. Tampa General Hospital in Tampa.

170 3. University of Florida Health Shands Hospital in  
 171 Gainesville.

172 4. AdventHealth Orlando in Orlando.

173 5. Mayo Clinic in Jacksonville.

174 6. Cleveland Clinic Florida in Weston.

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20201516c2

175 7. Largo Medical Center in Largo.  
 176 8. Broward Health Medical Center in Fort Lauderdale.  
 177 (b) Voting members of the council must reflect the ethnic  
 178 and gender diversity of this state.  
 179 (c) The Secretary of Health Care Administration shall serve  
 180 as the chair and a nonvoting member of the council.  
 181 (d) The Secretary of Health Care Administration shall  
 182 appoint the following individuals to serve as voting members of  
 183 the council:  
 184 1. The State Surgeon General or his or her designee.  
 185 2. A parent of a child who has had an organ transplant.  
 186 3. An adult who has had an organ transplant.  
 187 4. An adult patient who is on an organ transplant waiting  
 188 list.  
 189 5. A licensed pediatric and adult organ transplant  
 190 physician for each of the following areas:  
 191 a. Kidneys.  
 192 b. Lungs.  
 193 c. Heart.  
 194 d. Liver.  
 195 e. Pancreas.  
 196 6. A representative from an organ procurement organization.  
 197 7. An administrator of an organ transplant program.  
 198 (e) Appointments made under paragraph (a) are contingent  
 199 upon the hospital's compliance with chapter 395 and rules  
 200 adopted thereunder. A member of the council appointed under  
 201 paragraph (a) whose hospital fails to comply with such law and  
 202 rules may serve only as a nonvoting member until the hospital  
 203 comes into compliance.

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204 (f) Any vacancy on the council must be filled in the same  
 205 manner as the original appointment. Members are eligible for  
 206 reappointment.  
 207 (g) Members of the council shall serve without compensation  
 208 but may be reimbursed as provided in s. 112.061 for per diem and  
 209 travel expenses incurred in the performance of their duties  
 210 under this section.  
 211 (3) MEETINGS.—The council shall meet at least twice  
 212 annually and upon the call of the chair. The council may use any  
 213 method of telecommunications to conduct its meetings.  
 214 (4) DUTIES.—The council shall recommend to the agency and  
 215 the Legislature the standards for quality care of adult and  
 216 pediatric organ transplant patients, including recommendations  
 217 on minimum volume of transplants by organ type, personnel,  
 218 physical plant, equipment, transportation, and data reporting  
 219 for hospitals that perform organ transplants. The council may  
 220 further advise the agency and the Legislature regarding research  
 221 focused on improving overall organ availability and benefits for  
 222 organ donors. A voting member may vote on standards related to a  
 223 specific type of organ only if he or she represents a hospital  
 224 that has a transplant program for that organ.  
 225 (5) REPORT.—By October 1, 2021, the council shall submit a  
 226 report of its recommendations to the Governor, the President of  
 227 the Senate, the Speaker of the House of Representatives, the  
 228 Secretary of Health Care Administration, and the State Surgeon  
 229 General.  
 230 (6) SOVEREIGN IMMUNITY.—Members of the council acting in  
 231 good faith in the performance of their duties under this section  
 232 are considered agents of the state for purposes of s. 768.28.

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

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233 (7) AGENCY RULES.-

234 (a) Based on the recommendations of the council, the agency  
 235 shall develop and adopt rules for organ transplant programs  
 236 which, at a minimum, include all of the following:

237 1. Quality of care standards for adult and pediatric organ  
 238 transplants, including minimum volume thresholds by organ type,  
 239 personnel, physical plant, equipment, transportation, and data  
 240 reporting.

241 2. Outcome and survival rate standards that meet or exceed  
 242 nationally established levels of performance in organ  
 243 transplantation.

244 3. Specific steps to be taken by the agency and licensed  
 245 facilities when the facilities do not meet the volume, outcome,  
 246 or survival rate standards within a specified timeframe that  
 247 includes the time required for detailed case reviews and the  
 248 development and implementation of corrective action plans.

249 (b) This subsection is repealed July 1, 2030, unless  
 250 reviewed and saved from repeal through reenactment by the  
 251 Legislature.

252 Section 7. Subsection (3) of section 765.543, Florida  
 253 Statutes, is amended to read:

254 765.543 Organ and Tissue Procurement and Transplantation  
 255 Advisory Board; creation; duties.-

256 (3) The board shall:

257 (a) Assist the agency, in collaboration with other relevant  
 258 public or private entities, in the development of necessary  
 259 professional qualifications, including, but not limited to, the  
 260 continuing education, training, and performance of persons  
 261 engaged in the various facets of organ and tissue procurement,

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262 processing, preservation, and distribution for transplantation;

263 (b) Assist the agency in monitoring the appropriate and  
 264 legitimate expenses associated with organ and tissue  
 265 procurement, processing, and distribution for transplantation  
 266 and developing methodologies to assure the uniform statewide  
 267 reporting of data to facilitate the accurate and timely  
 268 evaluation of the organ and tissue procurement and  
 269 transplantation system;

270 (c) Provide assistance to the Florida Medical Examiners  
 271 Commission in the development of appropriate procedures and  
 272 protocols to ensure the continued improvement in the approval  
 273 and release of potential donors by the district medical  
 274 examiners and associate medical examiners;

275 (d) Develop with and recommend to the agency the necessary  
 276 procedures and protocols required to assure that all residents  
 277 of this state have reasonable access to available organ and  
 278 tissue transplantation therapy and that residents of this state  
 279 can be reasonably assured that the statewide procurement  
 280 transplantation system is able to fulfill their organ and tissue  
 281 requirements within the limits of the available supply and  
 282 according to the severity of their medical condition and need;  
 283 and

284 (e) Develop with and recommend to the agency any changes to  
 285 the laws of this state or administrative rules or procedures to  
 286 ensure that the statewide organ and tissue procurement and  
 287 transplantation system is able to function smoothly,  
 288 effectively, and efficiently, in accordance with the Federal  
 289 Anatomical Gift Act and in a manner that assures the residents  
 290 of this state that no person or entity profits from the

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291 altruistic voluntary donation of organs or tissues. In addition  
 292 to the general duties described in this subsection, by September  
 293 1, 2021, the board shall submit to the agency recommendations  
 294 that address all of the following:

295 1. The frequency of communication between patients and  
 296 organ transplant coordinators.

297 2. The monitoring of each organ transplantation facility  
 298 and the annual reporting and publication of relevant information  
 299 regarding the statewide number of patients placed on waiting  
 300 lists and the number of patients who receive transplants,  
 301 aggregated by the facility.

302 3. The establishment of a coordinated communication system  
 303 between organ transplantation facilities and living organ donors  
 304 for the purpose of minimizing the cost and time required for  
 305 duplicative lab tests, including the sharing of lab results  
 306 between facilities.

307 4. The potential incentives for organ transplantation  
 308 facilities which may be necessary to increase organ donation in  
 309 this state.

310 5. The creation of a more efficient regional or statewide  
 311 living organ donor process.

312 6. The potential opportunities and incentives for organ  
 313 transplantation research.

314 7. The best practices for organ transplantation facilities  
 315 and organ procurement organizations which promote the most  
 316 efficient and effective outcomes for patients.

317 8. The monitoring of organ procurement organizations.

318 Section 8. Section 765.548, Florida Statutes, is created to  
 319 read:

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

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320 765.548 Duties of the agency; organ donation.-

321 (1) The agency shall do all of the following:

322 (a) Monitor the operation of each organ transplantation  
 323 facility and organ procurement organization located in this  
 324 state.

325 (b) Develop uniform statewide rules regarding organ  
 326 donations. The rules must include the requirement that each  
 327 hospital designate at least one employee or representative of  
 328 the hospital who is educated on the protocols of the hospital  
 329 and federal and state regulations regarding organ donation, to  
 330 provide a clear explanation of such subjects to any patient, or  
 331 a patient's representative, who is considering posthumous or  
 332 living organ donation. The rules may also include, but need not  
 333 be limited to, procedures for maintaining a coordinated system  
 334 of communication between organ transplantation facilities.

335 (c) Evaluate the current protocols and procedures used by  
 336 organ transplantation facilities and make recommendations for  
 337 improving such protocols and procedures.

338 (d) Establish annual reporting requirements for organ  
 339 transplantation facilities and organ procurement organizations.

340 (e) In consultation with the State Board of Education and  
 341 the contractor procured by the agency pursuant to s. 765.5155,  
 342 develop a curriculum for educating high school students  
 343 regarding the laws of this state relating to organ donation.

344 (2) By December 1, 2021, and each year thereafter, the  
 345 agency shall publish any data and other relevant information to  
 346 adequately inform patients and potential donors about organ  
 347 donation and organ transplantation.

348 Section 9. Paragraph (e) of subsection (2) of section

Page 12 of 13

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

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349 409.815, Florida Statutes, is amended to read:

350 409.815 Health benefits coverage; limitations.—

351 (2) BENCHMARK BENEFITS.—In order for health benefits  
352 coverage to qualify for premium assistance payments for an  
353 eligible child under ss. 409.810-409.821, the health benefits  
354 coverage, except for coverage under Medicaid and Medikids, must  
355 include the following minimum benefits, as medically necessary.

356 (e) *Organ transplantation services*.—Covered services  
357 include pretransplant, transplant, and postdischarge services  
358 and treatment of complications after transplantation for  
359 transplants deemed necessary and appropriate within the  
360 guidelines set by the Organ Transplant Technical Advisory  
361 Council under s. 765.53 or the Bone Marrow Transplant Advisory  
362 Panel under s. 627.4236.

363 Section 10. This act shall take effect July 1, 2020.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Health Policy, *Chair*  
Appropriations Subcommittee on Health  
and Human Services, *Vice Chair*  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Children, Families, and Elder Affairs  
Military and Veterans Affairs and Space

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GAYLE HARRELL  
25th District

February 12, 2020

Senator Lizbeth Benacquisto  
402 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399

Chair Benacquisto,

I respectfully request that **SB 1516 – Organ Transplant Technical Advisory Council** be placed on the next available agenda for the Committee on Rules. SB 1516 passed its last committee stop unanimously.

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

Thank you,

A handwritten signature in cursive script that reads "Gayle".

Senator Gayle Harrell  
Senate District 25

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

### REPLY TO:

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
- 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

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

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20

Meeting Date

CS/SB 1516

Bill Number (if applicable)

476992

Amendment Barcode (if applicable)

Topic Organ Donation

Name Jon Harris Mauber

Job Title Public Policy Director

Address 201 E. Park Ave., Ste. 200

Phone 850-681-0980

Street

Tallahassee

FL

32301

City

State

Zip

Email

Speaking: [X] For [ ] Against [ ] Information

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

Representing Equality Florida

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/20  
Meeting Date

1516  
Bill Number (if applicable)

Topic ORGAN TRANSPLANT

Amendment Barcode (if applicable)

Name LOUIS BETZ

Job Title PRESIDENT

Address P.O. BOX 274108  
Street

Phone 813.963.2900

TAMPA  
City

FL  
State

33688  
Zip

Email LBETZ@VERIZON.NET

Speaking:  For  Against  Information

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

Representing MORE TRANSPLANTS MORE LIFE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/19  
Meeting Date

1516  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Lauren Wintenaar

Job Title \_\_\_\_\_

Address 108 E. Jefferson St. Suite A  
Street  
Tallahassee FL 32301  
City State Zip

Phone 850 509 3610

Email Lauren.clair.Henderson@gmail.com

Speaking:  For  Against  Information

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

Representing Betz Associates

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/2020

Meeting Date

1516

Bill Number (if applicable)

Topic Organ donation

Amendment Barcode (if applicable)

Name Ron Watson

Job Title Lobbyist

Address 3738 Murdon Way

Phone 850 567 1202

Street

Tallahassee

City

FL

State

32309

Zip

Email Watson.Strategies@Concast.net

Speaking:  For  Against  Information

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

Representing Florida Renal Assoc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1516  
Bill Number (if applicable)

Meeting Date

Topic Organ Donation

Amendment Barcode (if applicable)

Name Missy Timmins

Job Title Lobbyist

Address 2910 Kerry Forest Pkwy D4-318 Phone 850-264-3225

Tallahassee FL 32309  
City State Zip

Email missy@timminscorale.com

Speaking:  For  Against  Information

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

Representing More Transplants More Life

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 646

INTRODUCER: Innovation, Industry, and Technology Committee; Education Committee; and Senator Mayfield

SUBJECT: Intercollegiate Athlete Compensation and Rights

DATE: February 27, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dew, Brick</u>	<u>Sikes</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	<u>Fav/CS</u>
3.	<u>Dew, Brick</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 646 establishes the right of intercollegiate athletes and the responsibilities for postsecondary educational institutions concerning an intercollegiate athlete's right to be compensated for her or his name, image, or likeness (NIL). Specifically, the bill:

- Authorizes an intercollegiate athlete to earn compensation for the use of her or his NIL.
- Prohibits a postsecondary educational institution from adopting or maintaining a requirement that unduly restricts an intercollegiate athlete from earning compensation for the use of her or his NIL.
- Prohibits a postsecondary educational institution and an entity whose purpose includes benefiting a postsecondary educational institution or its athletic program (or an employee, officer, or director of such entity) from compensating a current or prospective intercollegiate athlete for the use of her or his name, image, or likeness (NIL).
- Requires a postsecondary educational institution to conduct a financial literacy and life skills workshop at the beginning of the intercollegiate athlete's first and third academic years and specifies conditions for the workshop.
- Prohibits a postsecondary educational institution from unduly restricting an intercollegiate athlete from obtaining professional representation by a licensed athlete agent or an attorney in good standing for the purpose of securing compensation for the use of such athlete's NIL.
- Specifies that an intercollegiate athlete may not enter into a contract for compensation for the use of NIL if a term in such contract conflicts with a term in the athlete's team contract.

- Requires an intercollegiate athlete who enters into a contract for compensation for the use of her or his NIL to disclose the contract to the postsecondary educational institution at which she or he is enrolled, in a manner designated by the institution.

The bill has no impact on state revenues or expenditures. The bill may have a negative, indeterminate fiscal impact on postsecondary educational institutions.

The bill takes effect July 1, 2021.

## II. Present Situation:

### National Collegiate Athletic Association

The National Collegiate Athletic Association (NCAA) is a nonprofit organization comprised of voluntary members, including colleges and universities, athletic conferences, and affiliated organizations. As the governing and regulatory body for the majority of intercollegiate athletic programs for Division I, Division II, and Division III sports, the NCAA describes its basic purpose as maintaining and retaining:<sup>1</sup>

- Intercollegiate athletics as integral to educational programs;
- Athletes as integral to student bodies; and
- A clear line of demarcation between intercollegiate athletics and professional sports.

The NCAA issues and enforces rules governing athletic competitions for member schools. The rules are developed by a governance system in which members introduce and vote on proposed rules, which vary for student athletes by division.

### *Amateurism and Eligibility*

A student athlete must receive an amateurism certification before being deemed eligible to compete in intercollegiate athletics. The NCAA defines the principle of amateurism to require that student athletes must be:<sup>2</sup>

- Motivated primarily by education and the derived physical, mental, and social benefits of intercollegiate athletic participation; and
- Protected from exploitation by professional and commercial enterprises.

A student athlete can lose amateur status, as determined by the NCAA, by engaging in certain activities, including:<sup>3</sup>

- Receiving payments from a sports team to participate;
- Using a recruiting agency, agent, or scouting service;
- Accepting prize money based on performance;
- Being represented or marketed by a professional sports agent; or
- Promoting or endorsing a commercial product or service.

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<sup>1</sup> NCAA Bylaw 1.3.1, *Division I Manual 2019-20 NCAA* (Jan. 28, 2020), available at <https://web3.ncaa.org/lstdbi/reports/getReport/90008>, at 1 (last visited Feb. 12, 2020).

<sup>2</sup> NCAA Bylaw 2.9, *Division I Manual*, *supra* note 1, at 3.

<sup>3</sup> NCAA, *Amateurism*, <http://www.ncaa.org/student-athletes/future/amateurism> (last visited Feb. 12, 2020); and NCAA Bylaw 12.1.2, *Division I Manual*, *supra* note 1, at 63-68.

### ***Compensation for Student Athletes***

The NCAA, along with member colleges and universities, awards nearly \$3.5 billion in athletic scholarships every year to more than 180,000 student athletes.<sup>4</sup> The NCAA also provides almost \$100 million each year to support student athletes' academic pursuits and assist with basic needs of college life, such as computers, clothing, or emergency travel expenses.<sup>5</sup>

Student athletes are permitted to receive scholarships or grants-in-aid from individual postsecondary educational institutions,<sup>6</sup> which may cover the cost of tuition and fees, books and supplies, room and board, transportation, and personal expenses.<sup>7</sup> However, a student athlete's grant-in-aid must not exceed the cost of attendance at the student athlete's institution.<sup>8</sup>

Penalties for violation of NCAA bylaws may include financial sanctions, repayment of moneys received from competition, forfeiture of contents, and expulsion from the association.<sup>9</sup>

### ***Name, Image, and Likeness (NIL)***

The NCAA's rules prohibit student athletes from receiving compensation for the use of the student athlete's NIL to advertise or promote the sale or use of any kind of commercial product or service.<sup>10</sup> Student athletes who use their NIL to promote sale or use of a commercial product or service are held ineligible to participate in intercollegiate athletics.<sup>11</sup> The NCAA has expressed concerns with the potentially harmful consequences from compensating student athletes for use of NIL, including the concern that a patchwork of different state rules may make it impossible for the NCAA to conduct intercollegiate athletics at a national level and undermine its commitment to provide student-athletes with broad-based offerings and comprehensive support.<sup>12</sup>

On October 28, 2019, the NCAA's Board of Governors voted to permit students participating in intercollegiate athletics to benefit from the use of their NIL in a manner consistent with the collegiate model.<sup>13</sup> The Board of Governors directed each of the NCAA's three divisions to consider updates to relevant bylaws and policies, with the addition of new rules no later than

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<sup>4</sup> NCAA, Big East Conference Commissioner Val Ackerman and Ohio State Athletic Director Gene Smith, *Statement from Federal and State Legislation Working Group co-chairs on name, image and likeness efforts* (Jan. 23, 2020), available at <http://www.ncaa.org/about/resources/media-center/news/statement-federal-and-state-legislation-working-group-co-chairs-name-image-and-likeness-efforts> (last visited Feb. 12, 2020).

<sup>5</sup> NCAA, *Finances*, <https://www.ncaa.org/about/resources/finances> (last visited Feb. 12, 2020).

<sup>6</sup> NCAA, *NCAA Recruiting Facts*, <http://www.ncaa.org/sites/default/files/Recruiting%20Fact%20Sheet%20WEB.pdf>, (last visited Feb. 12, 2020).

<sup>7</sup> Office of Student Financial Assistance, *Financial Aid Terms and Definitions*, <https://www.floridastudentfinancialaidsg.org/pdf/TermsAndDefinitions.pdf> (last visited Feb. 12, 2020), at 2.

<sup>8</sup> NCAA Bylaw 2.13, *Division I Manual*, *supra* note 1, at 3.

<sup>9</sup> *See Division I Manual*, *supra* note 1.

<sup>10</sup> NCAA Bylaws 12.4.2.3, 12.5.1.3, and 12.5.2.1, *Division I Manual*, *supra* note 1, at 74, 75, and 77.

<sup>11</sup> NCAA Bylaw 12.5.2.1, *Division I Manual*, *supra* note 1, at 77.

<sup>12</sup> NCAA, *Statement from Federal and State Legislation Working Group co-chairs on name, image and likeness efforts*, *supra* note 4.

<sup>13</sup> NCAA, *Board of Governors starts process to enhance name, image and likeness opportunities* (October 29, 2019), available at <http://www.ncaa.org/about/resources/media-center/news/board-governors-starts-process-enhance-name-image-and-likeness-opportunities> (last visited Feb. 12, 2020).

January 2021.<sup>14</sup> On January 23, 2020, representatives of the NCAA voiced concerns about harmful influences and effects relating to use of NIL, particularly regarding recruitment and national parity in intercollegiate athletics.<sup>15</sup> The NCAA's Federal and State Legislation Working Group<sup>16</sup> will provide ongoing guidance to members of the NCAA on modifications to permitted uses of a student athlete's NIL.<sup>17</sup>

### ***Representation of Student Athletes***

A student athlete is defined as a student whose enrollment was solicited by a member of the athletics staff or other representative of athletics interests with a view toward the student's ultimate participation in the intercollegiate athletics program.<sup>18</sup> Under NCAA rules student athletes are not permitted to agree to be represented by an agent or organization to market the student athlete's ability or reputation until the completion of the student athlete's last intercollegiate contest. NCAA rules also forbid a student athlete or his or her representative from negotiating or signing a playing contract in any sport in which the student athlete intends to compete, or marketing the student athlete's name or image.<sup>19</sup>

### **Contracts for Minors**

A contract made or proposed to be made by a minor, or a minor's parent or guardian on behalf of a minor, under which the minor is to perform or render artistic or creative services, including rendering services as a participant or player in professional or semi-professional athletics, may be approved by the probate division of the circuit court, or any other division of the circuit court that has guardianship jurisdiction, if the minor is a resident of this state or the services of the minor are to be performed or rendered in this state. A contract for the services of a minor may not extend for a period of more than 3 years.<sup>20</sup>

### **Licensing of Athlete Agents**

The licensing and regulation of athlete agents in Florida is administered by the Department of Business and Professional Regulation (DBPR), which processes licenses, responds to consumer complaints and inquiries, and monitors activities and compliance within the athlete agent industry. An athlete agent is a person who:<sup>21</sup>

- Recruits or solicits a student athlete to enter into an agent contract, directly or indirectly;

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<sup>14</sup> State University System of Florida, *Agency Bill Analysis for SB 646* (2020), at 2.

<sup>15</sup> *Statement from Federal and State Legislation Working Group co-chairs on name, image and likeness efforts*, *supra* note 4.

<sup>16</sup> The NCAA State and Federal Working Group was appointed by the president and Board of Governors of the NCAA to examine issues related to student athlete NIL and make recommendations to maintain the demarcation between professional and college sports. See *infra* note 33.

<sup>17</sup> *Statement from Federal and State Legislation Working Group co-chairs on name, image and likeness efforts*, *supra* note 4.

<sup>18</sup> NCAA Bylaw 12.02.14, *Division I Manual*, *supra* note 1, at 62. Any other student becomes a student athlete only when the student reports for an intercollegiate squad that is under the jurisdiction of the athletics department. *Id.* Florida law defines student athlete as any student who participates or formally intends to participate in intercollegiate athletics. Section 468.452(5), F.S.

<sup>19</sup> NCAA Bylaw, Article 12, *Division I Manual*, *supra* note 1, at 60.

<sup>20</sup> Section 743.08, F.S.

<sup>21</sup> Section 468.452(2), F.S.

- Procures, offers, promises, or attempts to obtain employment or promotional fees or benefits for a student athlete with a professional sports team or as a professional athlete, for any type of financial gain; or
- Markets or attempts to market the student athlete's athletic ability or athletic reputation with any promoter.

An agent contract is the contract or agreement in which a student athlete authorizes an athlete agent to represent the student in the marketing of the student's athletic ability or athletic reputation.<sup>22</sup> In order to be valid, such contract must include any fees paid to the agent and indicate how such fees are calculated. The athlete agent is also required to follow certain procedures during the contracting process, such as alerting the athletic director of the educational institution of the existence of the agent contract. A contract with an athlete agent is generally voidable by the student athlete within 14 days of execution.<sup>23</sup>

In order to be licensed as an athlete agent, an applicant must be at least 18 years of age, be of good moral character, and submit a completed the application form with fingerprints for a background check. Applicants must remit to DBPR an initial application fee of \$250, an initial licensure fee of \$375, an unlicensed activity fee of \$5, and a biennial renewal fee of \$220.<sup>24</sup>

Athlete agents must establish and maintain complete business and financial records,<sup>25</sup> and athlete agents are subject to disciplinary action for violating practice requirements, including:

- Commingling money or property of another person with the athlete agent's money or property.<sup>26</sup>
- Committing mismanagement or misconduct which causes financial harm to a student athlete or college or university.<sup>27</sup>
- Violating or aiding and abetting another person to violate the rules of the athletic conference or collegiate athletic association governing a student athlete or student athlete's college or university.<sup>28</sup>

An unlicensed person is generally prohibited from acting as an athlete agent.<sup>29</sup> However, an unlicensed individual may act as an athlete agent if:<sup>30</sup>

- A student athlete or person acting on the student athlete's behalf initiates communication with the individual; and
- The individual submits an application for licensure within seven days after an initial act as an athlete agent.

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<sup>22</sup> Section 468.452(1), F.S.

<sup>23</sup> Section 468.454, F.S.

<sup>24</sup> Fla. Admin Code R. 61-24.004.

<sup>25</sup> See s. 468.4565, F.S. DBPR has the right to full inspection of such records and may exercise its subpoena powers to obtain the financial and business records of an athlete agent.

<sup>26</sup> Section 468.456(1)(d), F.S.

<sup>27</sup> Section 468.456(1)(h), F.S.

<sup>28</sup> Section 468.456(1)(k), F.S. In addition, s. 468.4562, F.S., establishes civil actions for institutions damaged by a national association, athletic conference, or relevant entity on account of actions by an agent or student athlete.

<sup>29</sup> Section 468.4561, F.S.

<sup>30</sup> Section 468.453(3), F.S.

In the 2018-2019 fiscal year, there were 321 licensed athlete agents in Florida.<sup>31</sup>

### Intercollegiate Athletic Programs in Florida

Athletic programs in Florida include NCAA Divisions I and II, the National Junior College Athletic Association (NJCAA), the National Association of Intercollegiate Athletics (NAIA), and the National Christian College Athletic Association (NCCAA).<sup>32</sup> The number of schools in each program includes:

- 13 schools in NCAA Division I.
- 13 schools in NCAA Division II.
- 25 institutions in the NJCAA.
- 10 institutions in the NAIA.
- 3 institutions in the NCCAA.

The NCAA has levied 30 penalties against Division I universities in Florida since 1955. Recent sanctions include recruitment violations at the University of Central Florida in 2010, 2012, and 2019, and improper designations of student eligibility at Florida Agricultural and Mechanical University in 2019.

### *NCAA Division I Intercollegiate Athletic Programs*<sup>33</sup>

Institution Name	Classification	Total Undergraduates	Total Expenses	Total Revenue
Florida State University	FBS <sup>34</sup>	29,187	\$ 167,054,375.00	\$ 177,512,950.00
University of Florida	FBS	30,887	\$ 157,240,476.00	\$ 157,240,476.00
University of Miami	FBS	10,134	\$ 94,723,980.00	\$ 94,723,980.00
University of Central Florida	FBS	39,685	\$ 60,069,492.00	\$ 60,069,492.00
University of South Florida	FBS	24,342	\$ 51,710,233.00	\$ 51,710,233.00
Florida International University	FBS	26,210	\$ 31,172,655.00	\$ 38,240,735.00
Florida Atlantic University	FBS	15,907	\$ 27,662,831.00	\$ 27,662,831.00
Stetson University	FCS <sup>35</sup>	2,998	\$ 19,391,731.00	\$ 19,391,731.00
Jacksonville University	FCS	2,174	\$ 17,180,946.00	\$ 17,180,946.00
Florida Gulf Coast University	(no football)	10,821	\$ 15,037,882.00	\$ 15,037,882.00
Bethune-Cookman University	FCS	3,751	\$ 14,397,984.00	\$ 14,397,984.00
University of North Florida	(no football)	10,147	\$ 11,835,623.00	\$ 12,546,853.00

<sup>31</sup> Florida Department of Business and Professional Regulation, *Fiscal Year 2018-2019 Annual Report*, page 19, available at [http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport\\_FY1819.pdf](http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1819.pdf) (last visited Feb. 12, 2020).

<sup>32</sup> There are no NCAA Division III athletic programs in Florida.

<sup>33</sup> See generally, U.S. Department of Education, *Equity in Athletics Data Analysis*, <https://ope.ed.gov/athletics/#/customdata/search> (last visited Jan. 23, 2020).

<sup>34</sup> NCAA Football Bowl Championship Subdivision (formerly Division I-A). See NCAA, *Divisional Differences and the History of Multidivision Classification*, available at <http://www.ncaa.org/about/who-we-are/membership/divisional-differences-and-history-multidivision-classification> (last visited Feb. 12, 2020).

<sup>35</sup> NCAA Football Championship Subdivision (formerly Division I-AA). See *supra* note 34.

Institution Name	Classification	Total Undergraduates	Total Expenses	Total Revenue
Florida A&M University	FCS	6,852	\$ 9,922,955.00	\$ 9,922,955.00

### *Annual Submission of Disclosures*

Each institution of higher education which receives federal funding and is attended by students receiving athletically related student aid must annually submit detailed disclosures with respect to athletically related student aid to the Secretary of the U.S. Department of Education.<sup>36</sup> The law allows a similar report required by the NCAA to substitute for the requirements of the federal report.

### **Recent Developments**

#### *NCAA Working Group*

In 2019, the president and Board of Governors of the NCAA appointed a federal and state legislation working group to examine issues related to compensating student athletes for use of their NIL and to make recommendations to maintain the demarcation between professional and college sports.<sup>37</sup> The NCAA's Board of Governors charged the working group with writing a set of overarching principles to guide each division to develop consistent legislation regarding NIL payments.<sup>38</sup>

#### *Legislation in Other States*

California recently passed the first law of its kind allowing college athletes in that state to hire agents and earn compensation for the use of NIL, which will go into effect January 2023.<sup>39</sup> Other states including Illinois, New York, North Carolina, and Washington have proposed legislation relating to compensation for use of a student athlete's NIL,<sup>40</sup> and a federal bill is proposing to rescind tax-exempt status from any organization that denies an athlete compensation for use of NIL.<sup>41</sup>

#### *Relevant Litigation*

Since 2009, numerous former college athletes sued the NCAA for violating antitrust law by limiting the amount of compensation a college athlete may receive for performance. Courts have ruled that:

<sup>36</sup> 20 U.S.C. s. 1092.

<sup>37</sup> Michelle Brutlag Hosick, NCAA, *NCAA working group to examine name, image and likeness* (May 14, 2019), available at <http://www.ncaa.org/about/resources/media-center/news/ncaa-working-group-examine-name-image-and-likeness>.

<sup>38</sup> NCAA, *NCAA Board of Governors Federal and State Legislation Working Group* (2019), available at [https://ncaaorg.s3.amazonaws.com/committees/ncaa/exec\\_boardgov/BOG\\_FederalStateLegWGFINAL.pdf](https://ncaaorg.s3.amazonaws.com/committees/ncaa/exec_boardgov/BOG_FederalStateLegWGFINAL.pdf), at 1.

<sup>39</sup> Cal. Educ. Code § 67456 (West). Legislation undertaken in the state of California does not go into effect until 2023, allowing time for consideration and alignment of NCAA bylaws and legislation in other states.

<sup>40</sup> H.B. 3904, 2019 Leg. (Ill. 2019); S.B. 6722A, 2019 Leg. (N.Y. 2019); S.B. 335, 2019 Leg. (N.C. 2019); H.B. 1084, 2019 Leg. (Wash. 2019). See also National Conference of State Legislatures, *Pay for Play for College Athletes?* (Sept. 30, 2019), available at <https://www.ncsl.org/blog/2019/09/30/pay-for-play-for-college-athletes.aspx>.

<sup>41</sup> H.R. 1804, 116th Cong. (2019).

- The NCAA must allow an institution to provide an athlete with financial aid at least equal to the cost of attendance.<sup>42</sup>
- The NCAA may prohibit a college athlete from contracting to profit from his or her NIL without violating antitrust law.<sup>43</sup>
- A student athlete is not an employee and is not entitled to protection under the Fair Labor Standards Act.<sup>44</sup>

### III. Effect of Proposed Changes:

The bill creates s. 1006.74, F.S., to establish the right of intercollegiate athletes and the responsibilities for postsecondary educational institutions concerning an intercollegiate athlete's right to be compensated for her or his NIL. The bill also authorizes an athlete agent to represent an intercollegiate athlete, notwithstanding athletic conference or collegiate athletic association rules, bylaws, regulations, and policies to the contrary.

An intercollegiate athlete may earn compensation for the use of her or his NIL. Such compensation must be commensurate with the market value of the authorized use of the athlete's NIL, may not be provided in exchange for athletic performance or attendance at a particular institution, and may only be provided by a third party unaffiliated with such athlete's postsecondary educational institution.

An intercollegiate athlete who enters into a contract for compensation for the use of her or his NIL must disclose the contract to the postsecondary educational institution at which she or he is enrolled, in a manner designated by the institution. An intercollegiate athlete may not enter into a contract for compensation for the use of her or his NIL if a term of the contract conflicts with a term of the intercollegiate athlete's team contract.<sup>45</sup> A postsecondary educational institution asserting such conflict must disclose each relevant contract term in conflict to the intercollegiate athlete or her or his representative.

The bill requires an athlete agent representing an intercollegiate athlete for the purposes of securing compensation for the use of NIL to be licensed under Florida law. Similarly, the bill requires an attorney representing an intercollegiate athlete for such purposes to be a member in good standing with The Florida Bar. The duration of a contract for representation of an intercollegiate athlete for compensation for the use of such athlete's NIL may not extend beyond such athlete's participation in an athletic program at a postsecondary educational institution. An intercollegiate athlete under 18 years of age must have any contract for compensation for the use of her or his NIL approved as provided under Florida law.<sup>46</sup>

An athlete agent may represent an intercollegiate athlete in securing compensation for the use of such athlete's NIL, notwithstanding athletic conference or collegiate athletic association rules, bylaws, regulations, and policies to the contrary.

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<sup>42</sup> *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049 (9th Cir. 2015).

<sup>43</sup> *Id.*

<sup>44</sup> *Berger v. Nat'l Collegiate Athletic Ass'n*, 843 F.3d 285, 293 (7th Cir. 2016).

<sup>45</sup> The term "team contract" is not defined.

<sup>46</sup> See ss. 743.08 and 743.09, F.S.

The bill establishes responsibilities for postsecondary educational institutions. A postsecondary educational institution may not:

- Adopt or maintain a contract, rule, regulation, standard, or other requirements that prevents or unduly restricts an intercollegiate athlete from earning compensation for the use of her or his NIL. Earning such compensation may not affect the intercollegiate athlete's grant-in-aid or athletic eligibility.
- Prevent or unduly restrict an intercollegiate athlete from obtaining professional representation by an athlete agent or attorney engaged for the purpose of securing compensation for the use of her or his NIL.

Under the bill, a current or prospective intercollegiate athlete may not be compensated, or cause to be compensated, for the use of her or his NIL by:

- A postsecondary educational institution; or
- An entity whose purpose includes benefiting a postsecondary educational institution or its athletic program (or an employee, officer, or director of such entity).

Under the bill, grant-in-aid awarded to an intercollegiate athlete by a postsecondary educational institution is not compensation as it relates to the student athlete's NIL and may not be revoked or reduced as a result of an intercollegiate athlete earning compensation or obtaining relevant professional representation.

The bill requires a postsecondary educational institution to conduct a financial literacy and life skills workshop at the beginning of the intercollegiate athlete's first and third academic years. The workshop must be for a minimum of 5 hours, and at a minimum, include information or skills related to financial aid, debt management, marketing, advertising, referral, or solicitation by providers of financial products or services. It also must include time management skills and academic resources. The workshop may not include any marketing advertising referral or solicitation by providers of financial products or services.

The bill defines:

- "Athletic program" to mean an intercollegiate athletic program at a postsecondary educational institution.
- "Intercollegiate athlete" to mean a student who participates in an athletic program.
- "Postsecondary educational institution" to mean a state university, Florida College System institution, or private college or university receiving state financial aid or tuition assistance.

The bill requires the Board of Governors of the State University System and the State Board of Education to adopt relevant regulations and rules.

The bill takes effect July 1, 2021.

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

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**Commerce Clause

The bill includes regulations governing participation in intercollegiate athletics at postsecondary educational institutions. These requirements may affect interstate commerce. The U.S. Constitution confers authority upon the federal government to regulate commerce among the states.<sup>47</sup> Nondiscriminatory state laws affecting interstate commerce are valid unless the burdens imposed on interstate commerce clearly outweigh the local benefits.<sup>48</sup>

Contract Clause

The Florida Constitution includes a prohibition against laws impairing the obligation of contracts.<sup>49</sup> The U.S. Constitution includes a similar provision against the substantial impairment of contracts.<sup>50</sup> The bill may affect the obligations of postsecondary educational institutions to uphold existing contracts prohibiting students participating in intercollegiate athletics from earning compensation through the use of name, image, or likeness. Substantial impairments to existing contracts may be acceptable if the degree of the impairment is both “reasonable and necessary to achieve a valid state interest.”<sup>51</sup>

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

None.

**B. Private Sector Impact:**

Violations of National Collegiate Athletic Association (NCAA) bylaws may impact the eligibility of student athletes in the state to participate in intercollegiate athletics, and different laws in effect in different states may make it difficult to adopt a uniform

<sup>47</sup> U.S. Const., Art. 1, s. 8, cl. 3.

<sup>48</sup> *Dep’t of Revenue of Ky. v. Davis*, 553 U.S. 328, 338–39 (2008).

<sup>49</sup> Art. 1, s. 10, Fla. Const.

<sup>50</sup> U.S. Const., Art. 1, s. 10.

<sup>51</sup> *Nat’l Collegiate Athletic Ass’n v. Roberts*, TCA 94-40413-WS, 1994 WL 750585 (N.D. Fla. Nov. 8, 1994) (citing *Nat’l Collegiate Athletic Ass’n v. Miller*, 795 F. Supp. 1476, 1486 (D. Nev. 1992)).

approach to supporting student athletes.<sup>52</sup> The anticipated update to the NCAA’s bylaws and policies in January 2021 may place additional pressures on student athletes to attend only institutions in compliance with NCAA rules and bylaws in order to participate in intercollegiate athletics for the 2020-2021 academic year.

**C. Government Sector Impact:**

The bill may have a negative, indeterminate fiscal impact on postsecondary educational institutions. The bill may require university boards of trustees and related staff to amend university policies and regulations and draft related documents.<sup>53</sup> Additional athletics staff to provide oversight on student athlete compensation at each institution may also need to be hired.<sup>54</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that an intercollegiate athlete may not enter into a contract for compensation for the use of her or his NIL if a term of the contract conflicts with a term of the intercollegiate athlete’s team contract. The term “team contract” is not defined. The term may relate to “student athlete behavior contracts” in which a student athlete is required to meet specified academic and behavioral standards.<sup>55</sup>

The NCAA is currently considering updating its bylaws and policies related to the issues presented in this bill. The updated bylaws and policies are anticipated to be released by the NCAA in January 2021. It is not clear how this bill will affect the rights and responsibilities of Florida’s NCAA-member educational institutions and the institution’s student athletes.

**VIII. Statutes Affected:**

This bill substantially amends section 468.453 of the Florida Statutes.

This bill creates section 1006.74 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 Innovation, Industry, and Technology on February 17, 2020:**

The committee substitute:

<sup>52</sup> State University System of Florida, *Agency Bill Analysis for SB 646* (2020), at 4. (on file with the Senate Committee on Innovation, Industry, and Technology).

<sup>53</sup> *Id.*, at 3.

<sup>54</sup> *Id.*

<sup>55</sup> See Study.com, *Athlete Behavior Contract Template*, available at: <https://study.com/academy/lesson/athlete-behavior-contract-template.html> (last visited Feb. 12, 2020).

- Prohibits an entity whose purpose includes benefiting a postsecondary educational institution or its athletic program (or an employee, officer, or director of such entity) from compensating a current or prospective intercollegiate athlete for the use of her or his name, image, or likeness (NIL).
- Requires a postsecondary educational institution to conduct a financial literacy and life skills workshop at the beginning of the intercollegiate athlete's first and third academic years and specifies conditions for the workshop.
- Extends the effective date of the bill from July 1, 2020 to July 1, 2021.

**CS by Education on February 10, 2020:**

The committee substitute removes sections addressing contracts made by minors to license name, image, and likeness (NIL) while participating in intercollegiate athletics and compensation for postsecondary student athletes; amends a section to require an athlete agent to hold a valid license and authorize an athlete agent to represent an intercollegiate athlete in securing compensation for use of NIL; and creates a new section to provide intercollegiate athletes equal opportunity to control and profit from the commercial use of NIL, protected from unauthorized appropriation and commercial exploitation of publicity rights, including NIL. Specifically, the amendment:

- Defines the following terms:
  - “Athletic program” to mean an intercollegiate athletic program at a postsecondary educational institution.
  - “Intercollegiate athlete” to mean a student who participates in an athletic program.
  - “Postsecondary educational institution” to mean a state university, Florida College System institution, or private college or university receiving aid under chapter 1009.
- Establishes compensation and rights for intercollegiate athletes and responsibilities for postsecondary educational institutions as follows:
  - An intercollegiate athlete may earn compensation for the use of such athlete's NIL. Such compensation must be commensurate with the market value of the authorized use of the athlete's NIL, may not be provided in exchange for athletic performance or attendance at a particular institution, and may only be provided by a third party unaffiliated with such athlete's postsecondary educational institution.
  - A postsecondary educational institution may not adopt or maintain a contract, rule, regulation, standard, or other requirements that prevents or unduly restricts an intercollegiate athlete from earning compensation for the use of her or his NIL. Earning such compensation may not affect the intercollegiate athlete's grant-in-aid or athletic eligibility.
  - A postsecondary educational institution may not compensate a current or prospective intercollegiate athlete for the use of her or his NIL.
  - A postsecondary educational institution may not prevent or unduly restrict an intercollegiate athlete from obtaining professional representation by an athlete agent or attorney engaged for the purpose of securing compensation for the use of her or his NIL.
  - An athlete agent representing an intercollegiate athlete for the purposes of securing compensation for the use of NIL must be licensed under part IX of chapter 468, and an attorney representing an intercollegiate athlete for such purposes must be a member in good standing of The Florida Bar.

- Grant-in-aid, including cost of attendance, awarded to an intercollegiate athlete by a postsecondary educational institution is not compensation for such purposes and may not be revoked or reduced as a result of an intercollegiate athlete earning compensation or obtaining relevant professional representation.
- An intercollegiate athlete under 18 years of age must have any contract for compensation for the use of her or his NIL approved under statute.
- An intercollegiate athlete's contract for compensation for the use of NIL may not violate these rights and responsibilities.
- An intercollegiate athlete may not enter into a contract for compensation for the use of NIL if a term of the contract conflicts with a term of the intercollegiate athlete's team contract. A postsecondary educational institution asserting such conflict must disclose each relevant contract term in conflict to the intercollegiate athlete or her or his representative.
- An intercollegiate athlete who enters into a contract for compensation for the use of her or his NIL must disclose the contract to the postsecondary educational institution at which she or he is enrolled, in a manner designated by the institution.
- The duration of a contract for representation of an intercollegiate athlete or compensation for the use of such athlete's NIL may not extend beyond such athlete's participation in an athletic program at a postsecondary educational institution.
- Requires the Board of Governors and the State Board of Education to adopt relevant regulations and rules.
- Specifies that a person must hold a valid license as an athlete agent to act as an athlete agent representing an intercollegiate athlete for purposes of contracts authorized under statute.
- Authorizes an athlete agent to represent an intercollegiate athlete in securing compensation for the use of such athlete's NIL under statute, notwithstanding athletic conference or collegiate athletic association rules, bylaws, regulations, and policies to the contrary.

**B. Amendments:**

None.

By the Committees on Innovation, Industry, and Technology; and  
Education; and Senator Mayfield

580-03750A-20

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1 A bill to be entitled  
2 An act relating to intercollegiate athlete  
3 compensation and rights; creating s. 1006.74, F.S.;  
4 providing legislative findings; defining terms;  
5 authorizing certain intercollegiate athletes to earn  
6 compensation for the use of their names, images, or  
7 likenesses; providing requirements for such  
8 compensation; prohibiting postsecondary educational  
9 institutions from adopting or maintaining contracts,  
10 rules, regulations, standards, or other requirements  
11 that prevent or unduly restrict intercollegiate  
12 athletes from earning specified compensation;  
13 providing that certain compensation does not affect  
14 certain intercollegiate athlete eligibilities;  
15 prohibiting a postsecondary educational institution  
16 and other entities, institutions, and their employees  
17 from compensating intercollegiate athletes or  
18 prospective intercollegiate athletes for the use of  
19 their names, images, or likenesses; prohibiting a  
20 postsecondary educational institution from preventing  
21 or unduly restricting intercollegiate athletes from  
22 obtaining specified representation; requiring athlete  
23 agents and attorneys to meet specified requirements;  
24 providing that specified aid for intercollegiate  
25 athletes is not compensation; prohibiting the  
26 revocation or reduction of certain aid as a result of  
27 intercollegiate athletes earning certain compensation  
28 or obtaining specified representation; providing  
29 approval requirements for certain contracts for

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

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30 compensation for intercollegiate athletes who are  
31 minors; providing contract requirements; prohibiting  
32 intercollegiate athletes from entering into contracts  
33 for specified compensation that conflict with terms of  
34 her or his team contract; providing intercollegiate  
35 athlete contract disclosure requirements; prohibiting  
36 an intercollegiate athlete contract from extending  
37 beyond a specified timeframe; requiring each  
38 postsecondary institution to conduct a financial  
39 literacy and life skills workshop for intercollegiate  
40 athletes; requiring the Board of Governors and the  
41 State Board of Education to adopt regulations and  
42 rules, respectively; amending s. 468.453, F.S.;  
43 providing requirements for certain athlete agents;  
44 providing an effective date.  
45  
46 Be It Enacted by the Legislature of the State of Florida:  
47  
48 Section 1. Section 1006.74 Florida Statutes, is created to  
49 read:  
50 1006.74 Intercollegiate athlete compensation and rights.—  
51 The Legislature finds that intercollegiate athletics provide  
52 intercollegiate athletes with significant educational  
53 opportunities. However, participation in intercollegiate  
54 athletics should not infringe upon an intercollegiate athlete's  
55 ability to earn compensation for her or his name, image, or  
56 likeness. An intercollegiate athlete must have an equal  
57 opportunity to control and profit from the commercial use of her  
58 or his name, image, or likeness, and be protected from

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59 unauthorized appropriation and commercial exploitation of her or  
 60 his right to publicity, including her or his name, image, or  
 61 likeness.

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

63 (a) "Athletic program" means an intercollegiate athletic  
 64 program at a postsecondary educational institution.

65 (b) "Intercollegiate athlete" means a student who  
 66 participates in an athletic program.

67 (c) "Postsecondary educational institution" means a state  
 68 university, a Florida College System institution, or a private  
 69 college or university receiving aid under chapter 1009.

70 (2) INTERCOLLEGIATE ATHLETES' COMPENSATION AND RIGHTS AND  
 71 POSTSECONDARY EDUCATIONAL INSTITUTIONS RESPONSIBILITIES.—

72 (a) An intercollegiate athlete at a postsecondary  
 73 educational institution may earn compensation for the use of her  
 74 or his name, image, or likeness. Such compensation must be  
 75 commensurate with the market value of the authorized use of the  
 76 athlete's name, image, or likeness. To preserve the integrity,  
 77 quality, character, and amateur nature of intercollegiate  
 78 athletics and to maintain a clear separation between amateur  
 79 intercollegiate athletics and professional sports, such  
 80 compensation may not be provided in exchange for athletic  
 81 performance or attendance at a particular institution and may  
 82 only be provided by a third party unaffiliated with the  
 83 intercollegiate athlete's postsecondary educational institution.

84 (b) A postsecondary educational institution may not adopt  
 85 or maintain a contract, rule, regulation, standard, or other  
 86 requirement that prevents or unduly restricts an intercollegiate  
 87 athlete from earning compensation for the use of her or his

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88 name, image, or likeness. Earning such compensation may not  
 89 affect the intercollegiate athlete's grant-in-aid or athletic  
 90 eligibility.

91 (c) A postsecondary educational institution, an entity  
 92 whose purpose includes supporting or benefitting the institution  
 93 or its athletic programs, or an officer, director, or employee  
 94 of such institution or entity may not compensate or cause  
 95 compensation to be directed to a current or prospective  
 96 intercollegiate athlete for her or his name, image, or likeness.

97 (d) A postsecondary educational institution may not prevent  
 98 or unduly restrict an intercollegiate athlete from obtaining  
 99 professional representation by an athlete agent or attorney  
 100 engaged for the purpose of securing compensation for the use of  
 101 her or his name, image, or likeness. Pursuant to s. 468.453(8),  
 102 an athlete agent representing an intercollegiate athlete for  
 103 purposes of securing compensation for the use of her or his  
 104 name, image, or likeness, must be licensed under part IX of  
 105 chapter 468. An attorney representing an intercollegiate athlete  
 106 for purposes of securing compensation for the use of her or his  
 107 name, image, or likeness must be a member in good standing of  
 108 The Florida Bar.

109 (e) A grant-in-aid, including cost of attendance, awarded  
 110 to an intercollegiate athlete by a postsecondary educational  
 111 institution is not compensation for the purposes of this  
 112 subsection, and may not be revoked or reduced as a result of an  
 113 intercollegiate athlete earning compensation or obtaining  
 114 professional representation under this subsection.

115 (f) An intercollegiate athlete under 18 years of age must  
 116 have any contract for compensation for the use of her or his

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117 name, image, or likeness approved under ss. 743.08 and 743.09.

118 (g) An intercollegiate athlete's contract for compensation  
 119 for the use of her or his name, image, or likeness may not  
 120 violate this subsection.

121 (h) An intercollegiate athlete may not enter into a  
 122 contract for compensation for the use of her or his name, image,  
 123 or likeness if a term of the contract conflicts with a term of  
 124 the intercollegiate athlete's team contract. A postsecondary  
 125 educational institution asserting a conflict under this  
 126 paragraph must disclose each relevant contract term that  
 127 conflicts with the team contract to the intercollegiate athlete  
 128 or her or his representative.

129 (i) An intercollegiate athlete who enters into a contract  
 130 for compensation for the use of her or his name, image, or  
 131 likeness shall disclose the contract to the postsecondary  
 132 educational institution at which she or he is enrolled, in a  
 133 manner designated by the institution.

134 (j) The duration of a contract for representation of an  
 135 intercollegiate athlete or compensation for the use of an  
 136 intercollegiate athlete's name, image, or likeness may not  
 137 extend beyond her or his participation in an athletic program at  
 138 a postsecondary educational institution.

139 (k) A postsecondary institution shall conduct a financial  
 140 literacy and life skills workshop for a minimum of 5 hours at  
 141 the beginning of the intercollegiate athlete's first and third  
 142 academic years. The workshop shall, at a minimum, include  
 143 information concerning financial aid, debt management, and a  
 144 recommended budget for full and partial grant-in-aid  
 145 intercollegiate athletes based on the current academic year's

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146 cost of attendance. The workshop shall also include information  
 147 on time management skills necessary for success as an  
 148 intercollegiate athlete and available academic resources. The  
 149 workshop may not include any marketing, advertising, referral,  
 150 or solicitation by providers of financial products or services.

151 (3) REGULATIONS AND RULES.—The Board of Governors and the  
 152 State Board of Education shall adopt regulations and rules,  
 153 respectively, to implement this section.

154 Section 2. Subsections (8) and (9) are added to section  
 155 468.453, Florida Statutes, to read:

156 468.453 Licensure required; qualifications; license  
 157 nontransferable; service of process; temporary license; license  
 158 or application from another state.—

159 (8) Notwithstanding subsection (3), a person must hold a  
 160 valid license as an athlete agent to act as an athlete agent  
 161 representing an intercollegiate athlete for purposes of  
 162 contracts authorized under s. 1006.74.

163 (9) Notwithstanding athletic conference or collegiate  
 164 athletic association rules, bylaws, regulations, and policies to  
 165 the contrary, an athlete agent may represent an intercollegiate  
 166 athlete in securing compensation for the use of her or his name,  
 167 image, or likeness under s. 1006.74.

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

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government, *Chair*  
Children, Families, and Elder Affairs, *Vice Chair*  
Appropriations  
Environment and Natural Resources  
Health Policy

## SENATOR DEBBIE MAYFIELD

17th District

February 18, 2020

The Honorable Lizbeth Benacquisto  
Chairman, Rules  
400 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

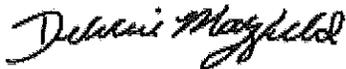
RE: SB 646

Dear Chairman Benacquisto,

I am respectfully requesting Senate Bill 646, a bill relating to Intercollegiate Athlete Compensation and Rights, be placed on the agenda for your Committee on Rules.

I appreciate your consideration of this bill and I look forward to working with you and the Rules Committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017

Thank you,



Senator Debbie Mayfield  
District 17

Cc; John B. Phelps and Cynthia Futch

**REPLY TO:**

- 900 East Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025 FAX: (888) 263-3815
- 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

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

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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**BILL:** CS/CS/CS/SB 666

**INTRODUCER:** Rules Committee; Governmental Oversight and Accountability Committee; Commerce and Tourism Committee; and Senator Mayfield

**SUBJECT:** Florida Development Finance Corporation

**DATE:** February 26, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Harmsen</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 666 modifies the governance and administration of the Florida Development Finance Corporation (FDFC) by:

- Requiring the FDFC and Department of Economic Opportunity (DEO) to provide additional annual reporting on the FDFC's activities;
- Redesigning the FDFC's board of directors to include the executive director of the DEO, who will serve as the chair of the board, and the director of the State Board of Administration's Division of Bond Finance;
- Implementing a conflict of interest policy for the FDFC's board of directors; and
- Instituting a sunset repeal, effective July 1, 2023, and every four years thereafter, unless reviewed and saved from repeal by the Legislature.

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

The bill takes effect July 1, 2020.

## II. Present Situation:

### Florida Development Finance Corporation

#### *Operation*

The FDFC is a statewide development financing authority created by the Legislature in 1993.<sup>1</sup> The original purpose of the FDFC was to foster the growth of manufacturing and other strong job-creating businesses in Florida by brokering private-activity bond financing through inter-local agreements with counties, municipalities, and other local political subdivisions.<sup>2</sup>

In the 2010 legislative session, the FDFC's responsibilities were broadened to allow it to participate in a federal Department of Energy guaranteed loan program for the development of renewable energy infrastructure projects, and related energy projects that may be eligible under federal law.<sup>3</sup> The FDFC has the power to function within the corporate limits of any public agency including local governments with which it enters into an inter-local agreement.<sup>4</sup>

Pursuant to s. 288.9605, F.S., the FDFC operates as a conduit bond issuer that issues bonds on behalf of borrowers.<sup>5</sup> While the FDFC functions as a mechanism to help borrowers access capital markets, it does not take on responsibility of debt repayment, even when a borrower fails to repay.<sup>6</sup> Conversely, the FDFC does not guarantee the bonds it issues but certain borrowers may opt in to the guaranty fund established by the FDFC pursuant to s. 288.9607, F.S., which guarantees that the bonds issued will be repaid. This guaranty fund consists of premiums paid by businesses that wish to participate in the fund and by a property interest in the infrastructure built with the insured bond's proceeds.<sup>7</sup>

A majority of the FDFC's financial assistance results from the issuance of municipal bonds, of which it may issue either a taxable revenue bond or a tax-exempt bond.<sup>8</sup> The bonds issued can provide financing for projects that further public purposes and are issued on behalf of a range of organizations.

Tax exempt bonds, known also as private activity bonds, require additional borrower qualification processes, including approval pursuant to the Tax Equity and Fiscal Responsibility Act of 1986 (TEFRA) and allocation from the Florida State Board of Administration's Division

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<sup>1</sup> Chapter 288, Part X, F.S. The corporation was created as a "public body corporate and politic" meaning that it is a legal entity or corporation with a public function. Ch. 93-187, ss. 24-45, Laws of Fla.

<sup>2</sup> Section 288.9602, F.S., generally expresses the legislative intent of the FDFC.

<sup>3</sup> Sections 2-10, ch. 2010-139, Laws of Fla.

<sup>4</sup> Section 288.9605(2)(e), F.S.

<sup>5</sup> "[The] FDFC facilitated the issuance of debt obligations...[t]hese bonds do not constitute a general debt, liability or obligation of FDFC, the state, or any local government." Florida Development Finance Corporation, *Financial Statements for the Year Ended June 30, 2019*, 12 (on file with the Senate Committee on Commerce and Tourism). See also, Florida Development Finance Corporation, *Bond Financing*, <https://www.fdfcbonds.com/traditional-bonds> (last visited Feb. 26, 2020).

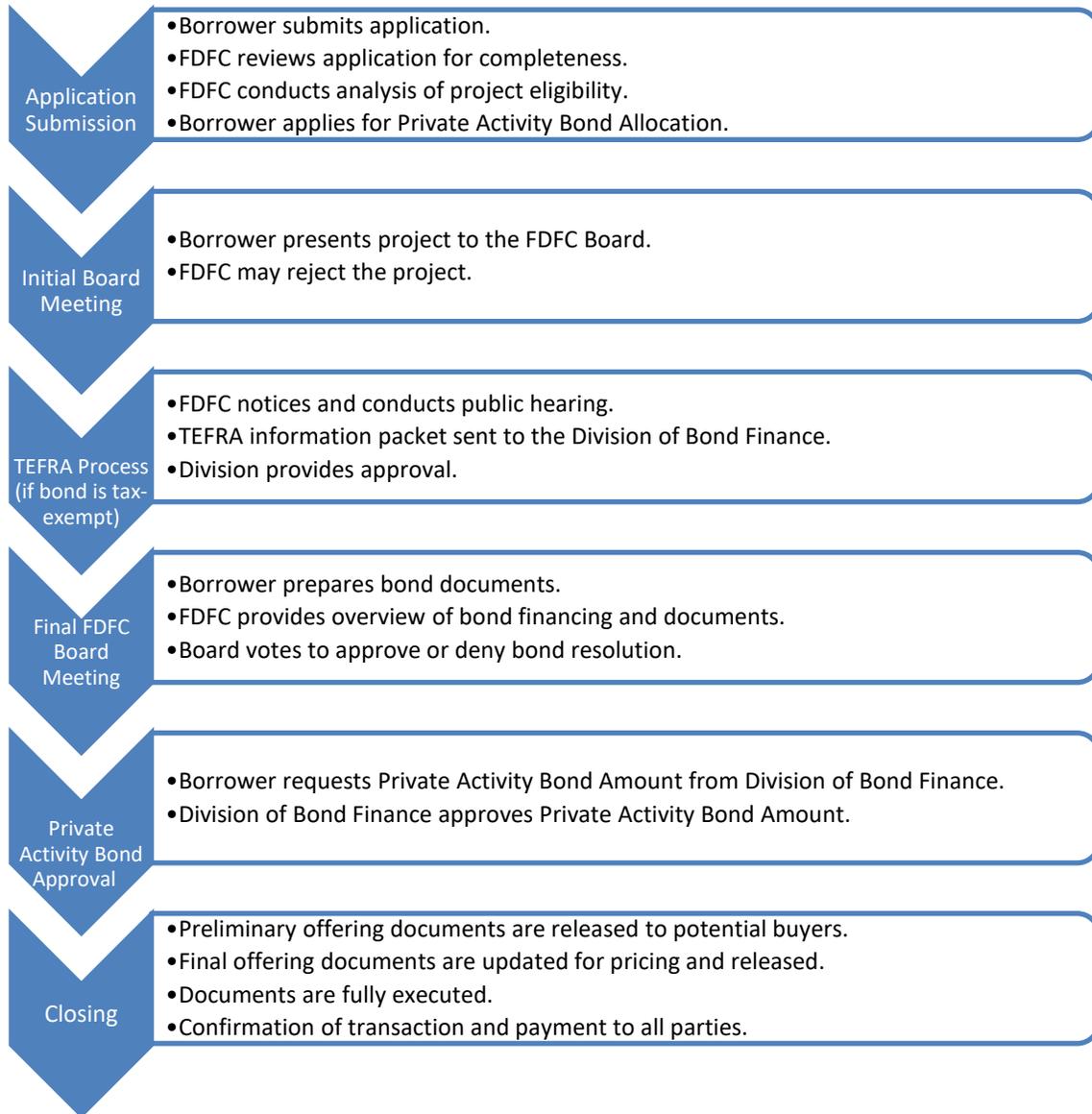
<sup>6</sup> *Id.*

<sup>7</sup> The guaranty may not exceed 5 percent of the aggregate principal amount of bonds or other indebtedness relating to any capital project. Section 288.9607, F.S.

<sup>8</sup> Florida Development Finance Corporation, *About Us*, <https://www.fdfcbonds.com/copy-of-about-us> (last visited Feb. 26, 2020).

of Bond Finance. These bonds are more lucrative financing options because they tend to have a lower interest rate than bank loans or taxable fixed-income securities, and investors benefit by not paying income taxes on interest payments.<sup>9</sup> The FDFC helps its borrowers pursue private activity bonds by assisting them with the additional qualification processes.<sup>10</sup>

In the fiscal year ending June 30, 2019, the FDFC facilitated the issuance of \$2,885,710,000 in eight new bonds. The borrowers served by these bonds include two charter schools, one solid waste disposal, two surface transportation, one healthcare, one student housing, and one not-for-profit business.<sup>11</sup>



<sup>9</sup> Steven Maguire and Joseph Hughes, Congressional Research Service, *Private Activity Bonds: An Introduction* (July 13, 2018), available at <https://fas.org/sgp/crs/misc/RL31457.pdf> (last visited Feb. 26, 2020).

<sup>10</sup> Florida Development Finance Corporation, *Bond Financing*, note 5.

<sup>11</sup> Florida Development Finance Corporation *Financial Statements for the Year Ended June 30, 2019*, *supra* note 5 at 3.

More generally, an applicant who wishes to work with the FDFC must submit an application, meet board approval for its project, and in cases of tax-exempt bonds, undergo a public hearing and receive approval from the State Board of Administration's Division of Bond Finance, and then have bonds issued for its project. (See exhibit above).<sup>12</sup>

The FDFC also administers the Property Assessed Clean Energy (PACE) program, for which it also may issue bonds and other financial assistance that supports energy conservation.<sup>13</sup> The PACE Program was launched June 29, 2017 and allows a property owner to use equity accrued from the original purchase as the basis for an extension of credit.<sup>14</sup> The PACE Program facilitated \$19,353,886 in five taxable residential bonds for the 2019 fiscal year.<sup>15</sup>

FDFC's revenues are generated exclusively by fees it charges for the issuance of bonds.<sup>16</sup> The fees assessed are a \$1,500 application fee and a tiered issuance fee due at the time of closing (sale of bonds). The tiered issuance fee is based on the face value of the bond issued: bonds valued from \$0 - \$2.5 million pay 75 basis points (0.75%); bonds valued from \$2.5-\$32.5 million pay 25 basis points (0.25%); and bonds valued over \$32.5 million pay 10 basis points (0.10%).<sup>17</sup>

### ***Governance and Administration***

The FDFC is governed by a five-member board of directors who are appointed by the Governor and confirmed by the Senate for four-year terms.<sup>18</sup> At least three of the FDFC's directors must be bankers selected from a list of candidates nominated by the Enterprise Florida, Inc. (EFI), and one must be an economic development specialist.<sup>19</sup> The directors are vested with the FDFC's powers and may take action on behalf of the corporation by a vote of a majority of the directors present at a meeting, unless otherwise required by the FDFC's bylaws.<sup>20</sup> The directors do not receive compensation for their service but are entitled to necessary expenses, including travel expenses.<sup>21</sup> Lastly, the board is empowered to employ a staff to facilitate the FDFC's functions.<sup>22</sup>

The FDFC must provide an annual report to the Governor, the Legislature, the Auditor General, and the governing body of each public entity with which it has an interlocal agreement which details:

- The FDFC's activities, operations, and accomplishments, including the specific number of businesses that the FDFC assisted;

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<sup>12</sup> OPPAGA, *Florida Development Finance Corporation has Recently Taken Steps to Improve Accountability* (Nov. 15, 2017) (on file with the Senate Committee on Commerce and Tourism).

<sup>13</sup> Florida Development Finance Corporation, *Property Assessed Clean Energy "PACE"- Commercial PACE*, <https://www.fdfcbonds.com/pace-commercial> (last visited Feb. 26, 2020). See also, s. 288.9606(7), F.S.

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

<sup>15</sup> Florida Development Finance Corporation, *Financial Statements for the Year Ended June 30, 2019*, *supra* note 5 at 3.

<sup>16</sup> Florida Development Finance Corporation, *Financial Statements for the Year Ended June 30, 2019*, *supra* note 5 at 6.

<sup>17</sup> Florida Development Finance Corporation, *Conduit Issuance Policy*, 6-7 (Feb. 26, 2019), available at [https://ca5cce56-0e6c-4988-82a7-74892bf1d07e.filesusr.com/ugd/b1b27e\\_0b227d45ff2b4e139bb36f2846f70b4b.pdf](https://ca5cce56-0e6c-4988-82a7-74892bf1d07e.filesusr.com/ugd/b1b27e_0b227d45ff2b4e139bb36f2846f70b4b.pdf) (last visited Feb. 26, 2020).

<sup>18</sup> Section 288.9604(2), F.S.

<sup>19</sup> Section 288.9604(2), F.S.

<sup>20</sup> Section 288.9604(3), F.S.

<sup>21</sup> Section 288.9604(3)(a)1., F.S.

<sup>22</sup> Section 288.9604(3)(c), F.S.

- The FDFC's assets, liabilities, income, and operating expenses, including a description of all outstanding revenue bonds; and
- Any findings made by the Auditor General in an audit conducted pursuant to s. 11.45, F.S.

### **Department of Economic Opportunity**

The Department of Economic Opportunity (DEO) was created to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians.<sup>23</sup> Within the DEO, the Division of Strategic Business Development evaluates business prospects; administers tax refund, tax credit, and grant programs; develops performance measures for state incentive programs and contracted entities; and develops and updates a 5-year statewide strategic plan for business expansion and economic development, consulting with EFI and CareerSource Florida, Inc. (CareerSource). The Division of Community Development assists local governments with community planning, administers state and federal community development grant programs, and assists in the development of the 5-year statewide strategic plan. The Division of Workforce Services submits a unified budget request for workforce development in conjunction with CareerSource, ensures that the state appropriately administers federal and state workforce funding, implements the state's reemployment assistance program, and assists in developing the 5-year statewide strategic plan.<sup>24</sup>

The DEO, with assistance from EFI, must submit by November 1 of each year an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the condition of the business climate and economic development in the state. The report must include the identification of problems, a prioritized list of recommendations, and the annual reports of specified other programs.<sup>25</sup> The DEO must establish annual performance standards for EFI, CareerSource, VISIT FLORIDA, and Space Florida, and report annually on how these performance measures are being met in the annual report.<sup>26</sup>

The head of the DEO is the executive director, who is appointed by the Governor, subject to confirmation by the Senate. The executive director serves at the pleasure of and reports to the Governor.<sup>27</sup> The executive director manages all activities and responsibilities of the DEO, and serves as the manager for the state with respect to contracts with EFI, and all applicable direct-support organizations.<sup>28</sup>

### **The Division of Bond Finance**

The Division of Bond Finance (Division) was created by the Legislature in 1969 to issue bonds on behalf of local governments and agencies of the State of Florida. It assumed the powers of its predecessor, the Florida Development Commission. The Division has been administratively

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<sup>23</sup> Section 20.60(4), F.S.

<sup>24</sup> Section 20.60(5), F.S.

<sup>25</sup> Section 20.60(10), F.S.

<sup>26</sup> Section 20.60(11), F.S.

<sup>27</sup> Section 20.60(2), F.S.

<sup>28</sup> Section 20.60(9), F.S.

housed within the State Board of Administration since 1992 and operates under the control of a governing board which consists of the Governor and Cabinet.<sup>29</sup> The Division has the power to:

- Sue and be sued;
- Issue any bonds of the state, and to issue bonds on behalf of any state agency;
- Exercise all of the powers relating to the issuance of bonds of any state agency;
- Employ a director of the division to be designated by the Governor;
- Employ or retain persons, firms, or corporations;
- Prepare resolutions and other necessary proceedings relating to the issuance and sale of bonds;
- Sell all state bonds authorized by law;
- Request assistance related to bond issuance from any state agency;
- Exercise the power of eminent domain;
- Remit the proceeds of any bonds sold for any state agency;
- Exercise control over the state's arbitrage compliance program; and
- Undertake investigations.<sup>30</sup>

The Division also determines the allocations for private activity bonds permitted to be issued in Florida under the Internal Revenue Code.<sup>31</sup>

### III. Effect of Proposed Changes:

#### Board of Directors

**Section 1** amends s. 20.60, F.S., to designate the executive director of the DEO to serve as a member of the FDFC. The executive director is authorized to designate another DEO employee to serve in this capacity.

**Section 2** amends s. 288.9604, F.S., to restructure the FDFC board of directors to add two new director positions that will be filled by the DEO's executive director and the State Board of Administration's director of the Division of Bond Finance, or his or her designee. The DEO executive director, or his or her designee, will serve at the chair of the board of directors. The bill maintains the board's capacity to elect a vice chair, and clarifies that the vice chair must be elected by a majority vote of the board.

This section makes conforming changes to transition the remaining five board seats, which are filled by gubernatorial appointees, to board director roles exclusively. The eligibility requirements for directors is broadened to require three of the appointed directors to be individuals with experience in finance, and a fourth to be an individual with experience in economic development. Additionally, this section removes the role of the EFI from the appointment process, thereby allowing individuals to apply directly to the Governor or FDFC to serve as board directors, rather than going through a nomination process that involves the EFI.

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<sup>29</sup> Information from <https://www.sbafla.com/bond/Home/About-the-Division-of-Bond-Finance>, last visited Feb. 26, 2020.

<sup>30</sup> Section 215.64, F.S.

<sup>31</sup> Section 159.804, F.S. See also, Division of Bond Finance, *Tax Equity and Fiscal Responsibility Act (TEFRA) Approval*, <https://www.sbafla.com/bondfinance/Other-Functions/TEFRA>, last visited Feb. 26, 2020.

This section also clarifies that the board of directors may conduct meetings by teleconference.

**Section 3** provides that those members who serve as the chair and vice chair of the FDFC's board of directors as of June 30, 2020, will serve as regular members of the board of directors beginning on July 1, 2020.

**Section 7** creates a conflict of interest policy for the FDFC's board of directors in s. 288.9619, F.S. The policy requires any FDFC director who has an interest in a party that is associated with an application that the FDFC has taken or will take action on to disclose the interest to the FDFC, record such disclosure in the FDFC's minutes, and remove him or herself from participation in the FDFC's actions on or relating to the application.

### **Corporate Activities**

**Section 5** amends s. 288.9606, F.S., to allow a bond, note, or other form of indebtedness issued pursuant to the Florida Development Finance Corporation Act to be issued for a term of up to 35 years. Currently, those bonds are limited to a maturity term of no more than 30 fiscal years.

This section also adds language that clarifies that bonds issued under part X of ch. 288, F.S., are not a debt, liability, or obligation of Florida or its political subdivisions, and do not constitute a pledge of the FDFC, Florida, or its political subdivisions' faith and credit for the repayment thereof. Additionally, those bonds issued under part X of ch. 288, F.S., must bear a statement to this effect.

**Section 4** amends s. 288.9605, F.S., to permit the FDFC to execute and deliver any document, agreement, or instrument in accordance with the Electronic Signature Act of 1996.

### **Reporting Requirements**

**Section 6** amends s. 288.9610, F.S., to require the FDFC to furnish a copy of its annual report to the DEO and the governing body of each public entity for which the FDFC issues revenue bonds pursuant to s. 288.9606, F.S., on or before 90 days after the close of its fiscal year. Additionally, **section 1** amends s. 20.60, F.S., to require the DEO to include both a summary of the FDFC's annual report and an additional detailed report on the FDFC's performance in its own annual report, due on November 1 of each year to the Governor, Senate President, and Speaker of the House of Representatives.

### **Effective Date and Sunset Provision**

The bill takes effect on July 1, 2020, and subjects the FDFC to sunset on July 1, 2023, and every fourth year thereafter, unless reviewed and saved from repeal by the Legislature.

## **IV. Constitutional Issues:**

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

The mandate restrictions in the State Constitution do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities'

ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

**Potential Conflict of Interest for the Division of Bond Finance**

Lines 94-97 designates the director of the Division of Bond Finance, or his or her designee, as a member of the board of directors of the FDFC. The Division of Bond Finance has an active role in approving tax exempt bond issues and the amount of private activity bond allocations for particular issues. This dual role of director (as a member of the board and the approving authority) may create an appearance of conflict or an actual conflict.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 20.60, 288.9604, 288.9605, 288.9606, and 288.9610.

The bill also creates section 288.9619 of the Florida Statutes and an unnumbered section of law.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS/CS/CS by Rules on February 26, 2020:**

- Clarifies the eligibility of the appointed members of the FDFC’s board of directors;
- Allows meetings of the directors to be held via teleconference;
- Permits the board of directors to elect a vice chair by a majority vote of its members;
- Extends the first sunset date of s. 288.9604 from October 1, 2022 to July 1, 2023;
- Permits the FDFC to electronically execute and deliver documents in accordance with the Electronic Signatures Act of 1996;
- Extends, from 30 fiscal years to 35 calendar years, the permitted duration of bonds, notes, and any other form of indebtedness issued under Part X of ch. 288, F.S.;
- Includes language that restates the FDFC’s, the State’s, and its political subdivisions’ financial obligations relating to bonds issued under Part X of ch. 288, F.S.;
- Requires the FDFC to submit an annual report and other related documents to public entities for which it issued revenue bonds; and
- Establishes a conflict of interest policy for the FDFC’s directors.

**CS/CS by Governmental Oversight and Accountability on February 10, 2020:**

- Clarifies that the DEO executive director may designate a DEO employee to serve as a member and chair of the FDFC.
- Removes from the bill unnecessary language regarding the continuation of contracts between FDFC and others.

**CS by Commerce and Tourism on January 21, 2020:**

- Substituted “directors” for the term “members” to provide for consistent use of terminology; and
- Removed from the bill the transfer of the FDFC’s officers, employees, and administrative and support staff to the DEO.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Rules (Mayfield) recommended the following:

**Senate Amendment (with directory and title amendments)**

Delete lines 93 - 150

and insert:

shall have experience in finance ~~be bankers who have been~~  
~~selected by the Governor from a list of bankers who were~~  
~~nominated by Enterprise Florida, Inc.,~~ and one of the directors  
shall have experience in ~~be an~~ economic development ~~specialist.~~

(3) (a) 1. A director may not receive compensation for his or  
her services, but is entitled to necessary expenses, including  
travel expenses, incurred in the discharge of his or her duties.



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12 Each appointed director shall hold office until his or her  
13 successor has been appointed.

14 2. Directors are subject to ss. 112.313(1)-(8), (10), (12),  
15 and (15); 112.3135; and 112.3143(2). For purposes of applying  
16 ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and  
17 112.3143(2) to activities of directors, directors shall be  
18 considered public officers and the corporation shall be  
19 considered their agency.

20 (b) The powers of the corporation shall be exercised by the  
21 directors thereof. A majority of the directors constitutes a  
22 quorum for the purposes of conducting business and exercising  
23 the powers of the corporation and for all other purposes.  
24 Meetings of the directors may be conducted by teleconference.

25 Action may be taken by the corporation upon a vote of a majority  
26 of the directors present, unless in any case the bylaws require  
27 a larger number. Any person may be appointed as director if he  
28 or she resides, or is engaged in business, which means owning a  
29 business, practicing a profession, or performing a service for  
30 compensation or serving as an officer or director of a  
31 corporation or other business entity so engaged, within the  
32 state.

33 (c) The directors of the corporation shall annually elect,  
34 by a majority vote, one of their members as ~~chair and one as~~  
35 vice chair. The corporation may employ a president, technical  
36 experts, and such other agents and employees, permanent and  
37 temporary, as it requires and determine their qualifications,  
38 duties, and compensation. For such legal services as it  
39 requires, the corporation may employ or retain its own counsel  
40 and legal staff.



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41           (4) The board may remove an appointed a director for  
42 inefficiency, neglect of duty, or misconduct in office. Such  
43 director may be removed only after a hearing and only if he or  
44 she has been given a copy of the charges at least 10 days before  
45 such hearing and has had an opportunity to be heard in person or  
46 by counsel. The removal of a director shall create a vacancy on  
47 the board which shall be filled pursuant to subsection (2).

48           (5) This section is repealed July 1, 2023, and July 1 of  
49 every fourth year thereafter, unless reviewed and saved from  
50 repeal by the Legislature.

51           Section 1. In order to implement the changes made by this  
52 act to s. 288.9604, Florida Statutes, the chair and vice chair  
53 of the board of directors of the Florida Development Finance  
54 Corporation as of June 30, 2020, shall serve as regular members  
55 beginning July 1, 2020. Nothing in this act may be construed to  
56 affect the terms of the directors serving on the board on July  
57 1, 2020.

58           Section 2. Subsection (3) is added to section 288.9605,  
59 Florida Statutes, to read:

60           288.9605 Corporation powers.—

61           (3) Documents, agreements, and instruments executed by the  
62 corporation may be executed and delivered in accordance with the  
63 Electronic Signature Act of 1996.

64           Section 3. Subsections (1) and (2) of section 288.9606,  
65 Florida Statutes, are amended to read:

66           288.9606 Issue of revenue bonds.—

67           (1) When authorized by a public agency pursuant to s.  
68 163.01(7), the corporation has power in its corporate capacity,  
69 in its discretion, to issue revenue bonds or other evidences of



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70 indebtedness which a public agency has the power to issue, from  
71 time to time to finance the undertaking of any purpose of this  
72 act, including, without limiting the generality thereof, the  
73 payment of principal and interest upon any advances for surveys  
74 and plans or preliminary loans, and has the power to issue  
75 refunding bonds for the payment or retirement of bonds  
76 previously issued. Bonds issued pursuant to this section shall  
77 bear the name "Florida Development Finance Corporation Revenue  
78 Bonds." The security for such bonds may be based upon such  
79 revenues as are legally available. In anticipation of the sale  
80 of such revenue bonds, the corporation may issue bond  
81 anticipation notes and may renew such notes from time to time,  
82 but the maximum maturity of any such note, including renewals  
83 thereof, may not exceed 5 years from the date of issuance of the  
84 original note. Such notes shall be paid from any revenues of the  
85 corporation available therefor and not otherwise pledged or from  
86 the proceeds of sale of the revenue bonds in anticipation of  
87 which they were issued. Any bond, note, or other form of  
88 indebtedness issued pursuant to this act may not exceed 35 years  
89 from their respective dates of issuance ~~shall mature no later~~  
90 ~~than the end of the 30th fiscal year after the fiscal year in~~  
91 ~~which the bond, note, or other form of indebtedness was issued.~~

92 (2) Bonds issued under this section do not constitute an  
93 indebtedness within the meaning of any constitutional or  
94 statutory debt limitation or restriction, and are not subject to  
95 the provisions of any other law or charter relating to the  
96 authorization, issuance, or sale of bonds. Bonds issued under  
97 ~~the provisions of~~ this act are declared to be for an essential  
98 public and governmental purpose. Bonds issued under this act,



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99 ~~the interest on which is exempt from income taxes of the United~~  
100 ~~States,~~ together with interest thereon and income therefrom, are  
101 exempted from all taxes, except those taxes imposed by chapter  
102 220, on interest, income, or profits on debt obligations owned  
103 by corporations, pursuant to s. 159.31. Bonds issued under this  
104 part are not a debt, liability, or obligation of the state or  
105 any subdivision thereof, or a pledge of faith and credit of the  
106 corporation or of the state or of any such political subdivision  
107 thereof, but are payable solely from the revenues provided  
108 therefor. Each bond issued under this part shall contain on the  
109 face thereof a statement to the effect that the corporation is  
110 not obligated to pay the same or interest thereon from the  
111 revenues and proceeds pledged therefor, and that the faith and  
112 credit or the taxing power of the corporation or of the state or  
113 of any political subdivision thereof is not pledged to the  
114 payment of the principal of or the interest on such bonds.

115 Section 4. Section 288.9610, Florida Statutes, is amended  
116 to read:

117 288.9610 Annual reports of Florida Development Finance  
118 Corporation.—On or before 90 days after the close of the Florida  
119 Development Finance Corporation's fiscal year, the corporation  
120 shall submit to the Governor, the Legislature, the Auditor  
121 General, the Department of Economic Opportunity, and the  
122 governing body of each public entity for which the corporation  
123 issues revenue bonds pursuant to s. 288.9606 or with which it  
124 has entered into an interlocal agreement a complete and detailed  
125 report setting forth:

126 (1) The results of any audit conducted pursuant to s.  
127 11.45.



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128 (2) The activities, operations, and accomplishments of the  
129 Florida Development Finance Corporation, including the number of  
130 businesses assisted by the corporation.

131 (3) Its assets, liabilities, income, and operating expenses  
132 at the end of its most recent fiscal year, including a  
133 description of all of its outstanding revenue bonds.

134 Section 5. Section 288.9619, Florida Statutes, is created  
135 to read:

136 288.9619 Conflicts of interest.—If any director has a  
137 direct or indirect interest associated with any party to an  
138 application on which the corporation has taken or will take  
139 action in exercising its power for the issuance of revenue bonds  
140 or other evidences of indebtedness, such interest must be  
141 publicly disclosed to the corporation and set forth in the  
142 minutes of the corporation. The director that has such interest  
143 may not participate in any action by the corporation with  
144 respect to such party and application.

145  
146 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

147 And the directory clause is amended as follows:

148 Delete lines 74 - 75

149 and insert:

150 Section 6. Subsections (2), (3), and (4) of section  
151 288.9604, Florida

152  
153 ===== T I T L E A M E N D M E N T =====

154 And the title is amended as follows:

155 Delete lines 22 - 28

156 and insert:



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157 conforming changes; authorizing meetings of the  
158 directors to be conducted by teleconference; providing  
159 for future repeals; requiring the chair and vice chair  
160 of the board of directors of the corporation to serve  
161 as regular members of the board after a specified  
162 date; providing construction; amending s. 288.9605,  
163 F.S.; providing for the electronic execution and  
164 delivery of certain documents executed by the  
165 corporation; amending s. 288.9606, F.S.; prohibiting  
166 certain bonds, notes, and other forms of indebtedness  
167 from exceeding a specified amount of time; specifying  
168 that certain bonds are payable solely from certain  
169 revenues; providing requirements for such bonds;  
170 amending s. 288.9610, F.S.; revising the entities to  
171 which the corporation is required to submit an annual  
172 report containing specified information; creating s.  
173 288.9619, F.S.; requiring that certain conflicts of  
174 interest be publicly disclosed to the corporation and  
175 set forth in the corporation's minutes; prohibiting a  
176 director with a conflict of interest from taking  
177 certain actions; providing an



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LEGISLATIVE ACTION

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The Committee on Rules (Mayfield) recommended the following:

**Senate Amendment to Amendment (363230)**

Delete line 103

and insert:

by corporations. Bonds issued under this

By the Committees on Governmental Oversight and Accountability;  
and Commerce and Tourism; and Senator Mayfield

585-03398-20

2020666c2

1 A bill to be entitled  
2 An act relating to the Florida Development Finance  
3 Corporation; amending s. 20.60, F.S.; requiring the  
4 executive director of the Department of Economic  
5 Opportunity to serve as a member of the board of  
6 directors of the Florida Development Finance  
7 Corporation; authorizing the executive director to  
8 designate a department employee to serve in this  
9 capacity; requiring that the annual report of the  
10 corporation be incorporated into the department's  
11 annual report on the condition of the business climate  
12 and economic development in the state; requiring the  
13 department to develop performance standards for the  
14 corporation and to include certain information  
15 relating to the standards in the department's annual  
16 report; amending s. 288.9604, F.S.; revising the  
17 membership of the board of directors of the  
18 corporation; requiring that the director of the  
19 Division of Bond Finance of the State Board of  
20 Administration, or his or her designee, serve on the  
21 board of directors of the corporation; making  
22 conforming changes; providing for future repeals;  
23 requiring the chair and vice chair of the board of  
24 directors of the corporation to serve as regular  
25 members of the board after a specified date; providing  
26 construction; amending s. 288.9610, F.S.; requiring  
27 the corporation to submit an annual report containing  
28 specified information to the department; providing an  
29 effective date.

Page 1 of 6

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

585-03398-20

2020666c2

30  
31 Be It Enacted by the Legislature of the State of Florida:  
32  
33 Section 1. Paragraph (c) is added to subsection (9) of  
34 section 20.60, Florida Statutes, and paragraph (b) of subsection  
35 (10) and subsection (11) of that section are amended, to read:  
36 20.60 Department of Economic Opportunity; creation; powers  
37 and duties.—  
38 (9) The executive director shall:  
39 (c) Serve as a member of the board of directors of the  
40 Florida Development Finance Corporation. The executive director  
41 may designate an employee of the department to serve in this  
42 capacity.  
43 (10) The department, with assistance from Enterprise  
44 Florida, Inc., shall, by November 1 of each year, submit an  
45 annual report to the Governor, the President of the Senate, and  
46 the Speaker of the House of Representatives on the condition of  
47 the business climate and economic development in the state.  
48 (b) The report must incorporate annual reports of other  
49 programs, including:  
50 1. Information provided by the Department of Revenue under  
51 s. 290.014.  
52 2. Information provided by enterprise zone development  
53 agencies under s. 290.0056 and an analysis of the activities and  
54 accomplishments of each enterprise zone.  
55 3. The Economic Gardening Business Loan Pilot Program  
56 established under s. 288.1081 and the Economic Gardening  
57 Technical Assistance Pilot Program established under s.  
58 288.1082.

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

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59 4. A detailed report of the performance of the Black  
60 Business Loan Program and a cumulative summary of quarterly  
61 report data required under s. 288.714.

62 5. The Rural Economic Development Initiative established  
63 under s. 288.0656.

64 6. The Florida Unique Abilities Partner Program.

65 7. A detailed report of the performance of the Florida  
66 Development Finance Corporation and a summary of the  
67 corporation's report required under s. 288.9610.

68 (11) The department shall establish annual performance  
69 standards for Enterprise Florida, Inc., CareerSource Florida,  
70 Inc., the Florida Tourism Industry Marketing Corporation, ~~and~~  
71 Space Florida, and the Florida Development Finance Corporation  
72 and report annually on how these performance measures are being  
73 met in the annual report required under subsection (10).

74 Section 2. Subsection (2), paragraphs (a) and (c) of  
75 subsection (3), and subsection (4) of section 288.9604, Florida  
76 Statutes, are amended, and subsection (5) is added to that  
77 section, to read:

78 288.9604 Creation of the authority.—

79 (2) The board of directors of the corporation shall consist  
80 of seven directors. The executive director of the department, or  
81 his or her designee, shall serve as chair of the board of  
82 directors of the corporation. The director of the Division of  
83 Bond Finance of the State Board of Administration, or his or her  
84 designee, shall serve as a director of the board of directors of  
85 the corporation. The Governor, subject to confirmation by the  
86 Senate, shall appoint the remaining five directors of the board  
87 of directors of the corporation, ~~who shall be five in number.~~

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88 The terms of office for the appointed directors shall be for 4  
89 years from the date of their appointment. A vacancy occurring  
90 during a term of an appointed director shall be filled for the  
91 unexpired term. A director shall be eligible for reappointment.  
92 At least three of the appointed directors of the corporation  
93 shall be bankers or individuals with experience in finance ~~who~~  
94 ~~have been selected by the Governor from a list of bankers who~~  
95 ~~were nominated by Enterprise Florida, Inc.,~~ and one of the  
96 directors shall be an economic development specialist.

97 (3)(a)1. A director may not receive compensation for his or  
98 her services, but is entitled to necessary expenses, including  
99 travel expenses, incurred in the discharge of his or her duties.  
100 Each appointed director shall hold office until his or her  
101 successor has been appointed.

102 2. Directors are subject to ss. 112.313(1)-(8), (10), (12),  
103 and (15); 112.3135; and 112.3143(2). For purposes of applying  
104 ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and  
105 112.3143(2) to activities of directors, directors shall be  
106 considered public officers and the corporation shall be  
107 considered their agency.

108 (c) ~~The directors of the corporation shall annually elect~~  
109 ~~one of their members as chair and one as vice chair.~~ The  
110 corporation may employ a president, technical experts, and such  
111 other agents and employees, permanent and temporary, as it  
112 requires and determine their qualifications, duties, and  
113 compensation. For such legal services as it requires, the  
114 corporation may employ or retain its own counsel and legal  
115 staff.

116 (4) The board may remove an appointed a director for

Page 4 of 6

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117 inefficiency, neglect of duty, or misconduct in office. Such  
 118 director may be removed only after a hearing and only if he or  
 119 she has been given a copy of the charges at least 10 days before  
 120 such hearing and has had an opportunity to be heard in person or  
 121 by counsel. The removal of a director shall create a vacancy on  
 122 the board which shall be filled pursuant to subsection (2).

123 (5) This section is repealed October 1, 2022, and October 1  
 124 of every fourth year thereafter, unless reviewed and saved from  
 125 repeal by the Legislature.

126 Section 3. In order to implement the changes made by this  
 127 act to s. 288.9604, Florida Statutes, the chair and vice chair  
 128 of the board of directors of the Florida Development Finance  
 129 Corporation as of June 30, 2020, shall serve as regular members  
 130 beginning July 1, 2020. Nothing in this act may be construed to  
 131 affect the terms of the directors serving on the board on July  
 132 1, 2020.

133 Section 4. Section 288.9610, Florida Statutes, is amended  
 134 to read:

135 288.9610 Annual reports of Florida Development Finance  
 136 Corporation.—On or before 90 days after the close of the Florida  
 137 Development Finance Corporation's fiscal year, the corporation  
 138 shall submit to the Governor, the Legislature, the Auditor  
 139 General, the Department of Economic Opportunity, and the  
 140 governing body of each public entity with which it has entered  
 141 into an interlocal agreement a complete and detailed report  
 142 setting forth:

143 (1) The results of any audit conducted pursuant to s.  
 144 11.45.

145 (2) The activities, operations, and accomplishments of the

585-03398-20 2020666c2

146 Florida Development Finance Corporation, including the number of  
 147 businesses assisted by the corporation.

148 (3) Its assets, liabilities, income, and operating expenses  
 149 at the end of its most recent fiscal year, including a  
 150 description of all of its outstanding revenue bonds.

151 Section 5. This act shall take effect July 1, 2020.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government, *Chair*  
Children, Families, and Elder Affairs, *Vice Chair*  
Appropriations  
Environment and Natural Resources  
Health Policy

**SENATOR DEBBIE MAYFIELD**

17th District

February 12, 2020

The Honorable Lizbeth Benacquisto  
Chairman, Rules  
400 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

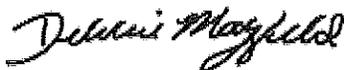
RE: SB 666

Dear Chairman Benacquisto,

I am respectfully requesting Senate Bill 666, a bill relating to Florida Development Finance Corporation, be placed on the agenda for your Committee on Rules.

I appreciate your consideration of this bill and I look forward to working with you and the Rules Committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017

Thank you,



Senator Debbie Mayfield  
District 17

Cc; John B. Phelps and Cynthia Futch

REPLY TO:

- 900 East Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025 FAX: (888) 263-3815
- 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

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

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/20

Meeting Date

666

Bill Number (if applicable)

Topic Fla. Development Finance Corporation

Amendment Barcode (if applicable)

Name Frank Bernardino

Job Title \_\_\_\_\_

Address 201 West Park Ave. Suite 100

Phone (561) 718-2345

Street

Tallahassee

FL

32301

Email frank@antfieldflorida.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Indian River County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/CS/SB 1414

INTRODUCER: Rules Committee; Agriculture Committee; Environment and Natural Resources Committee; and Senator Mayfield

SUBJECT: Fish and Wildlife Activities

DATE: February 26, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rogers</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Akhavein</u>	<u>Becker</u>	<u>AG</u>	<u>Fav/CS</u>
3.	<u>Rogers</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 1414 broadens the prohibition on the harassment of hunters, trappers, or fishers to include harassment on any public lands, public waters, or publicly or privately owned wildlife management and fish management areas.

The bill expands the number of free fishing days from 4 to 6.

The bill adds tegus and iguanas to the conditional nonnative snakes and lizards list and tightens the restrictions on the list from applying to possession of these species for sale or personal use to prohibiting any use except for educational, research, or eradication or control purposes. The bill authorizes the Fish and Wildlife Conservation Commission (FWC) to grandfather certain persons holding a valid captive wildlife Class III exhibition or sale license to continue dealing in green iguanas or tegus commercially, with limitations. The bill allows the sale of inventory of the species only outside of the state and prohibits import of the species into the state. The bill requires FWC to adopt rules to establish reporting requirements, biosecurity measures to prevent the escape of the species, and grandfathering provisions for persons that are currently in possession of green iguanas or tegus who do not qualify for the grandfathering provisions applicable to sale or exhibition.

**II. Present Situation:**

**Penalties for Violations Pertaining to Fish and Wildlife**

Under Art. IV, s. 9 of the Florida Constitution, the Fish and Wildlife Conservation Commission (FWC) is granted the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life. The Legislature may enact laws that aid FWC in its exercise of regulatory functions and executive powers in the areas of planning, budgeting, personnel management, and purchasing.<sup>1</sup>

Section 379.401, F.S., details FWC’s four-tier system for penalties and violations, civil penalties for noncriminal infractions, criminal penalties, and suspension and forfeiture of licenses and permits. Level One violations are considered the least serious while Level Four violations are considered the most serious.

The penalties for Level Two violations are as follows:

<b>Level Two Violation</b>	<b>Type of Infraction</b>	<b>Civil Penalty or Jail Time</b>	<b>License Restrictions</b>
First offense	2 <sup>nd</sup> Degree Misdemeanor <sup>2</sup>	Max: \$500 or Max: 60 days	None
Second offense within three years of previous Level Two violation (or higher)	1 <sup>st</sup> Degree Misdemeanor <sup>3</sup>	Min: \$250; Max: \$1,000 Max: one year	None
Third offense within five years of two previous Level Two violations (or higher)	1 <sup>st</sup> Degree Misdemeanor <sup>4</sup>	Min: \$500; Max: \$1,000 Max: one year	Suspension of license for one year
Fourth offense within 10 years of three previous Level Two violations (or higher)	1 <sup>st</sup> Degree Misdemeanor <sup>5</sup>	Min: \$750; Max \$1,000 or Max: one year	Suspension of license for three years

**Right to Hunt or Fish**

The Legislature recognizes that hunting, fishing, and the taking of game are a valued part of the cultural heritage of Florida and should be forever preserved for Floridians.<sup>6</sup> The Legislature further recognizes that these activities play an important part in the state’s economy and in the conservation, preservation, and management of the state’s natural areas and resources. Therefore, the Legislature intends that the citizens of Florida have a right to hunt, fish, and take game, subject to the regulations and restrictions prescribed by general law and by the FWC.<sup>7</sup>

<sup>1</sup> FLA. CONST. art. IV, s. 9.

<sup>2</sup> Section 379.401(2)(b)1., F.S.

<sup>3</sup> Section 379.401(2)(b)2., F.S.

<sup>4</sup> Section 379.401(2)(b)3., F.S.

<sup>5</sup> Section 379.401(2)(b)4., F.S.

<sup>6</sup> Section 379.104, F.S.

<sup>7</sup> *Id.*

### ***Fees for Freshwater or Saltwater Fishing Licenses***

The law and FWC rules prohibit the taking of game, freshwater or saltwater fish, or fur-bearing animals within this state without having first obtained a license, permit, or authorization number and paid the associated fees.<sup>8</sup> The following lists are freshwater and saltwater fees for fishing licenses set out in statute, though there can be additional fees for specialized permits.

For residents:

- An annual freshwater or saltwater fishing license costs \$15.50.<sup>9</sup>
- A 5-year freshwater or saltwater fishing license costs \$77.50.<sup>10</sup>
- A lifetime freshwater or saltwater fishing license costs:<sup>11</sup>
  - \$125 for persons 4 years of age or younger.
  - \$225 for persons 5 years of age or older but under 13 years of age.
  - \$300 for persons 13 years of age or older.

For nonresidents:

- A freshwater or saltwater fishing license for 3 consecutive days costs \$15.50.
- A freshwater or saltwater fishing license for 7 consecutive days costs \$28.50.
- An annual freshwater or saltwater fishing license costs \$45.50.<sup>12</sup>

FWC also charges \$1.50 for the cost of issuing the permit.<sup>13</sup> Exemptions from the fishing license requirement exist for those under the age of 16 or over the age of 65.<sup>14</sup>

### ***Free Fishing Days***

Florida law expressly authorizes FWC to designate by rule no more than 4 days a year as free freshwater fishing days and no more than 4 days a year as free saltwater fishing days.<sup>15</sup> This means people can fish without a license or permit on those days. A person who takes freshwater or saltwater fish on a free fishing day must comply with all laws, rules, and regulations governing the holders of a fishing license or permit and all other conditions and limitations regulating the taking of freshwater or saltwater fish as are imposed by law or rule.<sup>16</sup>

### ***Harassment of Hunters, Trappers, or Fishers***

Under s. 79.105, F.S., a person may not intentionally, within a publicly or privately owned wildlife management or fish management area or on any state-owned water body:

- Interfere with or attempt to prevent the lawful taking of fish, game, or nongame animals by another.

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<sup>8</sup> Section 379.354(1), F.S.

<sup>9</sup> Section 379.354(4), F.S.

<sup>10</sup> Section 379.354(9), F.S.

<sup>11</sup> Section 379.354(11), F.S.

<sup>12</sup> Section 379.354(5), F.S.

<sup>13</sup> Section 379.352(5), F.S.

<sup>14</sup> Section 379.353, F.S.

<sup>15</sup> Section 379.354(15), F.S.; Fla. Amin. Code R. 68A-5.006 sets out “Free-Freshwater Fishing Day-Spring” as the first weekend in April, and “Free-Freshwater Fishing Day-Summer” as the second weekend in June, or such other period as may be specified by order of FWC; Fla. Amin. Code R. 68A-5.006 sets out “License-Free Saltwater Fishing Days” as the first weekend in June, the first Saturday in September, and the Saturday following Thanksgiving.

<sup>16</sup> Section 379.354(15), F.S.

- Attempt to disturb fish, game, or nongame animals or attempt to affect their behavior with the intent to prevent their lawful taking by another.
- Anyone in violation of this provision is guilty of a Level Two violation (see above).

### **Nonnative Species**

FWC is responsible for the control and management of nonnative species.<sup>17</sup> Nonnative species are animals living outside captivity and which are not historically present in the state.<sup>18</sup> More than 500 fish and wildlife nonnative species have been documented in Florida.<sup>19</sup> Not all nonnative species pose a threat to Florida's ecology, but some nonnative species become invasive species by causing harm to native species, posing a threat to human health and safety, or causing economic damage.<sup>20</sup> To manage and minimize the impacts of nonnative species, it is unlawful to import for sale or use, or to release within the state, any species not native to Florida unless authorized by the FWC.<sup>21</sup>

### ***Class III Wildlife***

Any non-domesticated wildlife species that do not appear on the list of Class I<sup>22</sup> or Class II<sup>23</sup> wildlife are considered Class III wildlife.<sup>24</sup> Examples of Class III species include, but are not limited to, parrots, finches, skunks, foxes, geckos, snakes, and frogs.<sup>25</sup> A permit is required for personal possession, exhibition, or sale of Class III wildlife; however, a permit is not required to possess certain Class III wildlife as a personal pet.<sup>26</sup> Permittees must meet various caging and transportation requirements pursuant to FWC rules.<sup>27</sup>

### ***Prohibited or Conditional Nonnative Snakes and Lizards***

Prohibited species are nonnative species that pose a very high risk to native fish and wildlife, to the ecology of native wildlife communities, or to human safety. Possession of these species requires a permit from FWC and is generally limited to public exhibition and research.<sup>28</sup>

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<sup>17</sup> Fla. Admin. Code Ch. 68-5.

<sup>18</sup> Fish and Wildlife Conservation Commission (FWC), *What is a nonnative species?* <https://myfwc.com/wildlifehabitats/nonnatives/exotic-information/> (last visited February 6, 2020).

<sup>19</sup> FWC, *Florida's Exotic Fish and Wildlife*, <http://myfwc.com/wildlifehabitats/nonnatives/> (last visited on February 6, 020).

<sup>20</sup> *Id.*

<sup>21</sup> Section 379.231, F.S.

<sup>22</sup> Class I wildlife are those that pose a significant danger to people. Species include bears, cheetahs, baboons, crocodiles, elephants, gorillas, etc. FWC, *Captive Wildlife*, <https://myfwc.com/license/captive-wildlife/> (last visited Feb. 25, 2020). See Fla. Admin. Code R. 68A6.002(1)(a) for a list of Class I wildlife.

<sup>23</sup> Class II wildlife are those that can pose a danger to people. Species include alligators, badgers, bobcats, monkeys, ostrich, wolves, etc. FWC, *Captive Wildlife*, <https://myfwc.com/license/captive-wildlife/> (last visited Feb. 25, 2020). See Fla. Admin. Code R. 68A6.002(1)(b) for a list of Class II wildlife.

<sup>24</sup> Fla. Admin. Code R. 68A-6.002(1)(c); FWC, *Captive Wildlife*, <https://myfwc.com/license/captive-wildlife/> (last visited Feb. 25, 2020).

<sup>25</sup> FWC, *Captive Wildlife*, <https://myfwc.com/license/captive-wildlife/> (last visited Feb. 25, 2020).

<sup>26</sup> Fla. Admin. Code R. 68A-6.003; FWC, *Captive Wildlife*, <https://myfwc.com/license/captive-wildlife/> (last visited Feb. 25, 2020).

<sup>27</sup> Fla. Admin. Code R. 68A-6.011, 6.013-6.016.

<sup>28</sup> Section 379.372, F.S.; see Fla. Admin. Code R. 68-5.003 for a complete list of prohibited species.

Conditional species<sup>29</sup> are nonnative species that pose a risk to native fish and wildlife or to the ecology of native wildlife communities. Conditional nonnative snakes and lizards are not authorized to be acquired for personal possession.<sup>30</sup> Specifically, the following nonnative snakes and lizards are prohibited from being kept, possessed, or imported into the state, sold, bartered, traded, or bred for personal use or for sale for personal use:

- Burmese or Indian python;
- Reticulated python;
- Northern African python;
- Southern African python;
- Amethystine or scrub python;
- Green Anaconda;
- Nile Monitor; and
- Any other reptile designated as a conditional or prohibited species by FWC.<sup>31</sup>

A reptile dealer, researcher, or public exhibitor providing educational exhibits may apply for a permit to import or possess conditional nonnative snakes and lizards.<sup>32</sup> Conditional nonnative snakes and lizards must be kept indoors or in outdoor enclosures with a fixed roof and must be permanently identified with a passive integrated transponder (PIT) tag, also known as a microchip.<sup>33</sup> Owners of such species must submit a Captive Wildlife Disaster and Critical Incident Plan to FWC and must maintain records of their inventory.<sup>34</sup>

In 2018, the Legislature created s. 379.2311, F.S., which directed FWC to create a pilot program to mitigate the impact of priority invasive species on the public lands or waters of the state. The goal of the pilot program is to examine the benefits of using strategically deployed, trained private contractors to slow the advance of priority invasive species, contain their populations, and eradicate them from this state. As part of the program, FWC is authorized to enter into contracts to capture or destroy animals belonging to priority invasive species found on public lands, in the waters of this state, or on private lands or waters with the consent of the owner. All captures and disposals of animals that are priority invasive species must be documented and photographed and the geographic location of the take must be recorded for research purposes. FWC is required to submit a report of findings and recommendations regarding its implementation of the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2021.

Priority invasive species are:

- Lizards of the genus *Tupinambis*, also known as tegu lizards;
- The conditional lizard and snake species listed above;

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<sup>29</sup> Statute uses the phrase “reptiles of concern,” but FWC lists such species in its conditional species list. See FWC, *Reptiles of Concern*, <https://myfwc.com/license/captive-wildlife/reptiles-of-concern/> (last visited February 6, 2020); s. 379.372(b), F.S.

<sup>30</sup> FWC, *Conditional Snakes and Lizards*, <http://myfwc.com/wildlifehabitats/nonnatives/regulations/snakes-and-lizards/> (last visited February 6, 2020).

<sup>31</sup> Section 379.372(2)(a), F.S.

<sup>32</sup> Fla. Admin. Code R. 68-5.005(1); see FWC, *Conditional Snakes and Lizards*, <http://myfwc.com/wildlifehabitats/nonnatives/regulations/snakes-and-lizards/> (last visited February 6, 2020).

<sup>33</sup> Fla. Admin. Code R. 68-5.005(5).

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

- *Pterois volitans*, also known as red lionfish; and
- *Pterois miles*, also known as the common lionfish or devil firefish.<sup>35</sup>

### ***Tegus***

The Argentine Black and White Tegu (*Tupinambis merianae*), commonly referred to as a tegu, is a large species of lizard that can grow up to four feet in length and is native to South America.<sup>36</sup> Tegus are not innately aggressive but have sharp teeth, strong jaws, and sharp claws, which they will use to defend themselves if threatened.<sup>37</sup> Tegus are an invasive species and have known breeding populations in Miami-Dade and Hillsborough counties<sup>38</sup> and an emerging population in Charlotte County.<sup>39</sup> The tegu causes harm to native species by disturbing alligator nests and consuming their eggs, and utilizing gopher tortoise burrows and consuming juvenile gopher tortoises.<sup>40</sup>

The tegu is not designated as a conditional or prohibited species.<sup>41</sup> However, a person must possess a license from FWC to sell a tegu or for public exhibition.<sup>42</sup> A November 2019 survey of all Class III license holders allowing for the sale of reptiles found 106 license holders listed that may sell tegus with more than 1,245 in inventory.<sup>43</sup> FWC developed a trapping removal program and works with other agencies and organizations to assess the tegu's threat and develop management strategies.<sup>44</sup> The goal of the program is to minimize the impact of tegus on native wildlife and natural areas.<sup>45</sup> A limited number of commercial wildlife operators trap and remove tegus for homeowners or on other private lands.<sup>46</sup>

Members of the public may also remove and kill tegus from 22 FWC managed public lands without a license or permit.<sup>47</sup> Through these efforts, over 7,800 tegus have been reported to the Commission as removed from the wild or found dead in Florida by FWC staff, partners, and the public since 2012, primarily in Miami-Dade County.<sup>48</sup>

### ***Green Iguanas***

Green iguanas (*Iguana iguana*) are large, typically green lizards, though they can sometimes be brown or almost black in color.<sup>49</sup> Some adults can take on an orange or pink coloration during

<sup>35</sup> Section 379.2311, F.S.

<sup>36</sup> FWC, *Argentine black and white tegu*, <https://myfwc.com/wildlifehabitats/nonnatives/reptiles/whiptails-and-wall-lizards/tegu/> (last visited February 6, 2020).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> FWC, *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Agriculture Committee).

<sup>40</sup> FWC, *Argentine black and white tegu*, <https://myfwc.com/wildlifehabitats/nonnatives/reptiles/whiptails-and-wall-lizards/tegu/> (last visited February 6, 2020).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*; see s. 379.3761, F.S.

<sup>43</sup> FWC, *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Agriculture Committee).

<sup>44</sup> *Id.* (under Frequently Asked Questions).

<sup>45</sup> *Id.*

<sup>46</sup> FWC, *Senate Bill 230 Agency Bill Analysis*, 2 (Feb. 17, 2017) (on file with the Senate Agriculture Committee).

<sup>47</sup> FWC, EO 17-11 (Mar. 31, 2017), available at <https://myfwc.com/media/3682/eo-17-11.pdf> (last visited February 6, 2020).

<sup>48</sup> FWC, *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Agriculture Committee).

<sup>49</sup> FWC, *Invasive Green Iguana*, <https://myfwc.com/wildlifehabitats/profiles/reptiles/green-iguana/> (last visited February 6, 2020).

certain times of the year. Male green iguanas can grow to over five feet in length and weigh up to 17 pounds. Females can also reach five feet in length but usually do not exceed seven pounds. Females typically reach reproductive maturity at two to four years of age. Green iguanas can live up to 10 years in the wild and 19 years in captivity. Green iguanas thrive in southern Florida and are not cold hardy.<sup>50</sup>

Green iguanas are a nonnative, invasive species in Florida.<sup>51</sup> Green iguanas can live on the ground, in shrubs, or in trees in a variety of habitats including suburban developments, urban areas, small towns, and agricultural areas. They are excellent swimmers, tolerating both salt and freshwater and can submerge themselves for up to four hours at a time.<sup>52</sup>

Green iguanas cause damage to residential and commercial landscape vegetation and are often considered a nuisance by property owners. Iguanas are attracted to trees with foliage or flowers, most fruits (except citrus) and almost any vegetable. Some green iguanas cause damage to infrastructure by digging burrows that erode and collapse sidewalks, foundations, seawalls, berms, and canal banks. Green iguanas may also leave droppings on docks, moored boats, seawalls, porches, decks, pool platforms, and inside swimming pools.

Green iguanas are not designated as conditional or prohibited species.<sup>53</sup> However, a person must possess a license from the FWC to sell a green iguana or for public exhibition.<sup>54</sup> A November 2019 survey of all Class III license holders allowing for the sale of reptiles found 382 license holders listed that may sell iguanas with more than 5,307 in inventory.<sup>55</sup>

The FWC encourages removal of green iguanas from private properties by landowners. Members of the public may also remove and kill iguanas from 22 FWC managed public lands without a license or permit.<sup>56</sup> The FWC hosts Iguana Technical Assistance Public Workshops to help empower homeowners to manage this nonnative species on their own property with legal trapping and removal options.<sup>57</sup> In 2018, FWC initiated removal efforts on public conservation lands, resulting in nearly 5,000 iguanas being removed.<sup>58</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 379.105, F.S., relating to harassment of hunters, trappers, or fishers. The bill revises existing language to protect hunters, trappers, or fishers from harassment within or on any public lands, publicly or privately owned wildlife management areas or fish management areas, or public waters. The bill increases areas upon which hunters, trappers, or fishers are protected from harassment by expanding the protection to all public lands and all public waters (from wildlife management or fish management areas or a state-owned water body).

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*; see s. 379.3761, F.S.

<sup>55</sup> FWC, *Senate Bill 1414 Agency Bill Analysis*, 3 (Dec. 19, 2019) (on file with the Senate Agriculture Committee).

<sup>56</sup> FWC, EO 17-11 (Mar. 31, 2017), available at <https://myfwc.com/media/3682/eo-17-11.pdf> (last visited February 6, 2020).

<sup>57</sup> FWC, *Nonnative Species Public Workshops*, <https://myfwc.com/wildlifehabitats/nonnatives/public-workshops/> (last visited February 6, 2020).

<sup>58</sup> FWC, *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Agriculture Committee).

**Section 2** amends s. 379.354, F.S., to increase the free saltwater and freshwater fishing days from 4 to 6.

**Section 3** amends s. 379.372, F.S., to state that no person, party, firm, association, or corporation may keep, possess, import into the state, sell, barter, trade, or breed the following species except for educational, research, or eradication or control purposes:

- Burmese or Indian python (*Python molurus*).
- Reticulated python (*Python reticulatus*).
- Northern African python (*Python sebae*).
- Southern African python (*Python natalensis*).
- Amethystine or scrub python (*Morelia amethystinus*).
- Green Anaconda (*Eunectes murinus*).
- Nile monitor (*Varanus niloticus*).
- Green iguana (*Iguana iguana*).
- Tegu Lizard (any species of the genera *Salvator* or *Tupinambis*).
- Any other reptile designated as a conditional or prohibited species by FWC.

This adds the green iguana and the tegu lizard to the list of species that cannot be kept or sold for personal use. It also makes the prohibition stricter by changing it from prohibiting these species for being “kept or sold for personal use” to prohibiting anyone from possessing them “except for educational or research purposes.”

The bill specifies that FWC can allow a person, party, firm, association, or corporation who documented an inventory of green iguanas or tegus on their 2019 application for a Class III captive wildlife exhibition or sales license and held a valid license on January 1, 2020, to continue dealing in green iguanas or tegus commercially for as long as the license remains active. This grandfathering provision is void upon the transfer or lapse of the license.

The bill limits the sale of an existing inventory of green iguanas or tegus to sale outside of the state and prohibits the import of species into the state.

The bill requires FWC to adopt rules to establish reporting requirements, biosecurity measures to prevent the escape of the species, and grandfathering provisions for persons that are currently in possession of green iguanas or tegus who do not qualify for the grandfathering provisions applicable to sale or exhibition.

**Section 4** provides an effective date of July 1, 2020.

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

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

There may be a negative fiscal impact to commercial owners of tegus and iguana who are no longer able to sell their remaining inventory of species within the state under the bill.

**C. Government Sector Impact:**

There may be a negative fiscal impact to the state for additional free fishing days, but it is likely negligible.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This committee substitute substantially amends the following sections of the Florida Statutes: 379.105, 379.354, and 379.372.

This committee substitute reenacts s. 379.2311(1) of the Florida Statutes.

**IX. Additional Information:**

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

**CS/CS/CS by Rules on February 26, 2020:**

- FWC is authorized to allow a person, party, firm, association, or corporation who documented an inventory of green iguanas or tegus on their 2019 application for a Class III captive wildlife exhibition or sales license and held a valid license on January 1, 2020, to continue dealing in green iguanas or tegus commercially for as long as the license is active. This grandfathering provision is void upon the transfer or lapse of the license.
- The sale of an existing inventory of green iguanas or tegus is limited to sale outside of the state and the import of the species into the state is prohibited.
- FWC is required to adopt rules to establish reporting requirements, biosecurity measures to prevent the escape of the species, and grandfathering provisions for persons that are currently in possession of green iguanas or tegus who do not qualify for the grandfathering provisions applicable to sale or exhibition.

**CS/CS by Agriculture on February 11, 2020:**

The exceptions to keeping, possessing, importing into the state, selling, bartering, trading, or breeding specified nonnative snakes and lizards has been expanded to include eradication or control purposes, as well as for educational and research.

**CS by Environment and Natural Resources on February 3, 2020:**

The prohibition on tegus is expanded to include any species of the genera *Salvator* or *Tupinambis*.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2020	.	
	.	
	.	
	.	

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The Committee on Rules (Mayfield) recommended the following:

**Senate Amendment (with directory and title amendments)**

Between lines 79 and 80  
insert:

(b) If a person, firm, or corporation holds a valid captive wildlife class III exhibition or sale license on January 1, 2020, and documented an inventory of green iguanas or tegus on his or her or its 2019 application, the commission may grandfather that person, firm, or corporation so as to allow them to continue dealing in green iguanas or tegus commercially for as long as the license remains active. Such status is void



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12 upon any license transfer or lapse. The person, firm, or  
13 corporation may only sell such inventory of green iguanas or  
14 teguas outside of this state and may not import the species into  
15 this state. The commission shall adopt rules that address all of  
16 the following:

- 17       1. Reporting requirements.  
18       2. Biosecurity measures to prevent escape of these species.  
19       3. Any necessary grandfathering provisions for those  
20 persons presently in possession of either a green iguana or a  
21 tegu lizard who do not meet the grandfathering provisions of  
22 this paragraph.

23  
24 ===== D I R E C T O R Y   C L A U S E   A M E N D M E N T =====

25 And the directory clause is amended as follows:

26       Delete lines 58 - 59

27 and insert:

28       Section 3. Present paragraphs (b) through (e) of subsection  
29 (2) of section 379.372, Florida Statutes, are redesignated as  
30 paragraphs (c) through (f), respectively, a new paragraph (b) is  
31 added to that subsection, and paragraph (a) of that subsection  
32 is amended, to read:

33  
34 ===== T I T L E   A M E N D M E N T =====

35 And the title is amended as follows:

36       Delete line 16

37 and insert:

38       prohibition; providing that certain persons, firms, or  
39       corporations may continue to deal in green iguanas or  
40       teguas commercially under certain circumstances;



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41 requiring such green iguanas or tegus to be sold  
42 outside of this state; prohibiting the import of green  
43 iguanas or tegus; requiring the commission to adopt  
44 rules that meet certain requirements; reenacting s.  
45 379.2311(1), F.S., relating

By the Committees on Agriculture; and Environment and Natural Resources; and Senator Mayfield

575-03476-20

20201414c2

1 A bill to be entitled  
 2 An act relating to fish and wildlife activities;  
 3 amending s. 379.105, F.S.; prohibiting certain  
 4 harassment of hunters, trappers, and fishers within or  
 5 on public lands or publicly or privately owned  
 6 wildlife and fish management areas, or in or on public  
 7 waters; amending s. 379.354, F.S.; authorizing the  
 8 Fish and Wildlife Conservation Commission to designate  
 9 additional annual free freshwater and saltwater  
 10 fishing days; amending s. 379.372, F.S.; prohibiting  
 11 the keeping, possessing, importing, selling,  
 12 bartering, trading, or breeding of certain species  
 13 except for educational, research, or eradication or  
 14 control purposes; including green iguanas and species  
 15 of the genera *Salvator* and *Tupinambis* in such  
 16 prohibition; reenacting s. 379.2311(1), F.S., relating  
 17 to the definition of the term "priority invasive  
 18 species," to incorporate the amendment made to s.  
 19 379.372, F.S., in a reference thereto; providing an  
 20 effective date.

21  
 22 Be It Enacted by the Legislature of the State of Florida:

23  
 24 Section 1. Subsection (1) of section 379.105, Florida  
 25 Statutes, is amended to read:

26 379.105 Harassment of hunters, trappers, or fishers.—

27 (1) A person may not intentionally, within or on any public  
 28 lands or a publicly or privately owned wildlife management and  
 29 or fish management areas, area or in or on any public waters

Page 1 of 4

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

575-03476-20

20201414c2

30 ~~state-owned water body:~~  
 31 (a) Interfere with or attempt to prevent the lawful taking  
 32 of fish, game, or nongame animals by another within or on such  
 33 lands or areas, or in or on such waters.  
 34 (b) Attempt to disturb fish, game, or nongame animals or  
 35 attempt to affect their behavior with the intent to prevent  
 36 their lawful taking by another within or on such lands or areas,  
 37 or in or on such waters.  
 38 Section 2. Subsection (15) of section 379.354, Florida  
 39 Statutes, is amended to read:  
 40 379.354 Recreational licenses, permits, and authorization  
 41 numbers; fees established.—  
 42 (15) FREE FISHING DAYS.—The commission may designate by  
 43 rule no more than 6 4 consecutive or nonconsecutive days in each  
 44 year as free freshwater fishing days and no more than 6 4  
 45 consecutive or nonconsecutive days in each year as free  
 46 saltwater fishing days. Notwithstanding any other provision of  
 47 this chapter, a ~~any~~ person may take freshwater fish for  
 48 noncommercial purposes on a free freshwater fishing day and may  
 49 take saltwater fish for noncommercial purposes on a free  
 50 saltwater fishing day, without obtaining or possessing a license  
 51 or permit or paying a license or permit fee as set forth  
 52 ~~prescribed~~ in this section. A person who takes freshwater or  
 53 saltwater fish on a free fishing day must comply with all laws,  
 54 rules, and regulations governing the holders of a fishing  
 55 license or permit and all other conditions and limitations  
 56 regulating the taking of freshwater or saltwater fish as are  
 57 imposed by law or rule.  
 58 Section 3. Paragraph (a) of subsection (2) of section

Page 2 of 4

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

575-03476-20

20201414c2

59 379.372, Florida Statutes, is amended to read:

60 379.372 Capturing, keeping, possessing, transporting, or  
61 exhibiting venomous reptiles, reptiles of concern, conditional  
62 reptiles, or prohibited reptiles; license required.—

63 (2)(a) ~~A No~~ person, party, firm, association, or  
64 corporation ~~may not shall~~ keep, possess, import into the state,  
65 sell, barter, trade, or breed the following species except for  
66 educational, research, or eradication or control purposes  
67 ~~personal use or for sale for personal use:~~

- 68 1. Burmese or Indian python (*Python molurus*).
- 69 2. Reticulated python (*Python reticulatus*).
- 70 3. Northern African python (*Python sebae*).
- 71 4. Southern African python (*Python natalensis*).
- 72 5. Amethystine or scrub python (*Morelia amethystinus*).
- 73 6. Green Anaconda (*Eunectes murinus*).
- 74 7. Nile monitor (*Varanus niloticus*).
- 75 8. Green iguana (*Iguana iguana*).
- 76 9. Tegu lizard (any species of the genera *Salvator* or  
77 *Tupinambis*).
- 78 10. Any other reptile designated as a conditional or  
79 prohibited species by the commission.

80 Section 4. For the purpose of incorporating the amendment  
81 made by this act to section 379.372, Florida Statutes, in a  
82 reference thereto, subsection (1) of section 379.2311, Florida  
83 Statutes, is reenacted to read:

84 379.2311 Nonnative animal management.—

85 (1) As used in this section, the term “priority invasive  
86 species” means the following:

- 87 (a) Lizards of the genus *Tupinambis*, also known as tegu

575-03476-20

20201414c2

88 lizards;

89 (b) Species identified in s. 379.372(2)(a);

90 (c) *Pterois volitans*, also known as red lionfish; and

91 (d) *Pterois miles*, also known as the common lionfish or  
92 devil firefish.

93 Section 5. This act shall take effect July 1, 2020.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government, *Chair*  
Children, Families, and Elder Affairs, *Vice Chair*  
Appropriations  
Environment and Natural Resources  
Health Policy

## SENATOR DEBBIE MAYFIELD

17th District

February 12, 2020

The Honorable Lizbeth Benacquisto  
Chairman, Rules  
400 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

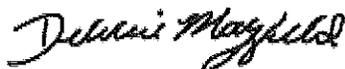
RE: SB 1414

Dear Chairman Benacquisto,

I am respectfully requesting Senate Bill 1414, a bill relating to Fish and Wildlife Activities, be placed on the agenda for your Committee on Rules.

I appreciate your consideration of this bill and I look forward to working with you and the Rules Committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017

Thank you,



Senator Debbie Mayfield  
District 17

Cc; John B. Phelps and Cynthia Futch

**REPLY TO:**

- 900 East Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025 FAX: (888) 263-3815
- 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

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

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/19

Meeting Date

SB1414

Bill Number (if applicable)

Topic non-native reptiles

Amendment Barcode (if applicable)

Name Phil Goss

Job Title President

Address 2271 Rock Road

Phone 317-431-3298

Street

Naples

City

FL

State

34120

Zip

Email president@usark.org

Speaking:  For  Against  Information

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

Representing U.S. Association of Reptile Keepers

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26

Meeting Date

1414

Bill Number (if applicable)

Topic Fish & Wildlife Interference w/ Hunting & Fishing

Amendment Barcode (if applicable)

Name Lane Stephens

Job Title \_\_\_\_\_

Address 111 N Calhoun St.

Phone 513-0004

Street

Tallahassee

FL

32301

Email lane@sigfox.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Airboat Association; Southeastern Dog Hunters Assoc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/20

Meeting Date

1414

Bill Number (if applicable)

Topic wildlife

~~4245022~~  
Amendment Barcode (if applicable)

Name Kate MacFall

Job Title state director

Address 1624 McIntosh Circle

Phone 850 508-1001

Street

Tallahassee FL 32308

City

State

Zip

Email kmacfalle@hsus.org

Speaking:  For  Against  Information

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

Representing Humane Society of the United States

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 752

INTRODUCER: Community Affairs Committee; Infrastructure and Security Committee; and Senator Bean and others

SUBJECT: Emergency Sheltering of Persons with Pets

DATE: February 24, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Fav/CS</u>
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Proctor</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 752 requires:

- The Department of Education (DOE) and the Department of Agriculture and Consumer Services (DACS) to assist the Division of Emergency Management (DEM) in determining strategies for the emergency sheltering of persons with pets;
- A county which maintains any designated shelters to also designate a shelter that can accommodate persons with pets; and
- Shelters to comply with applicable disaster assistance policies and procedures of the Federal Emergency Management Agency (FEMA) and with safety procedures regarding the sheltering of pets established in the shelter component of both local and state comprehensive emergency management plans.

**II. Present Situation:**

On October 6, 2006, the federal Pets Evacuation and Transportation Standards (PETS) Act was signed into law, amending Sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).<sup>1</sup> The PETS Act requires state and local emergency preparedness authorities to plan for how they will accommodate the needs of individuals with

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<sup>1</sup> 42 U.S.C 5170b, 42 U.S.C. 5192; the Pets Evacuation and Transportation Standards Act (PETS Act) of 2006, P.L. No. 109-308, § 4, 120 Stat. 1725 (2006); and 44 CFR §§ 206.223(a), 206.225(a).

household pets and service animals prior to, during, and following a major disaster or emergency when presenting their plans to FEMA. Section 403, as amended by the PETS Act, authorizes FEMA to provide rescue, care, shelter, and essential needs for individuals with household pets and service animals and to the household pets and animals themselves following a major disaster or emergency.

FEMA Disaster Assistance Policy (DAP) 9523.19 provides:

- “Household pet” means a domesticated animal, such as a dog, cat, bird, rabbit, rodent, or turtle that is traditionally kept in the home for pleasure rather than for commercial purposes, can travel in commercial carriers, and be housed in temporary facilities. Household pets do not include reptiles (except turtles), amphibians, fish, insects and arachnids, farm animals (including horses), and animals kept for racing purposes; and
- “Service animal” means any guide dog, signal dog, or other animal individually trained to assist an individual with a disability including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.<sup>2,3</sup>

Also, FEMA DAP 9523.19 identifies the expenses related to state and local governments’ emergency pet evacuation and sheltering activities that may be eligible for reimbursement to include:

- Household pet rescue (may include overtime for regular full-time employees, regular and overtime for contract labor, and use of owned or leased equipment); and
- Congregated household pet sheltering (may include facilities, supplies and commodities, labor, equipment, emergency veterinary services, transportation, shelter safety and security, cleaning and restoration, removal and disposal of animal carcasses, and cataloging and tracking system for pets).<sup>4</sup>

For state and local governments to qualify for federal disaster funding from FEMA’s Public Assistance Grant Program, they must comply with the PETS Act requirements in their disaster preparedness plans.

The DEM, with the assistance of the DACS, is required to address strategies for the evacuation of persons with pets in the shelter component of the state comprehensive emergency management plan and must include the requirement for similar strategies in its standards and requirements for local comprehensive emergency management plans.<sup>5</sup>

During the 2018 Regular Session, the need for a minimum number of pet shelters per-county was discussed by the House Select Committee on Hurricane Response and Preparedness, and their final report contained the following policy recommendation:

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<sup>2</sup> Department of Justice, Americans with Disabilities Act (ADA), 42 USC 1201 et seq, implementing regulations at 28 CFR § 36.104.

<sup>3</sup> Federal Emergency Management Agency, *FEMA Disaster Assistance Policy*, available at <https://www.fema.gov/pdf/government/grant/pa/policy.pdf> (last visited January 23, 2020).

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

<sup>5</sup> Section 252.3568, F.S.

- Determine the adequacy of communications about and the availability of pet shelters, and consider means to improve communication and the merits of requiring a standard population-based minimum number of pet shelters or ratio of pet and non-pet shelters.<sup>6</sup>

The 2014 State of Florida Comprehensive Emergency Management Basic Plan addresses the sheltering of pets or service animals and states:

“A person with who uses a service animal must be allowed to bring his or her service animal into a general population or special needs shelter and has the right to be accompanied by a service animal in all areas of a public accommodation (See sections 252.355(3) and 413.08, F. S.). In developing these strategies, the state considers the following:

- Locating pet-friendly shelters within buildings with restrooms, running water, and proper lighting.
- Allowing pet owners to interact with their animals and care for them.
- Ensuring animals are properly cared for during the emergency.”<sup>7</sup>

### III. Effect of Proposed Changes:

The bill amends s. 252.3568, F.S., to require:

- The DOE and the DACS to assist the DEM in determining strategies for the emergency sheltering of persons with pets;
- A county which maintains any designated shelters to also designate a shelter that can accommodate persons with pets; and
- Shelters that can accommodate persons with pets to comply with the applicable disaster assistance policies and procedures of FEMA and with safety procedures regarding the sheltering of pets established in the shelter component of both local and state comprehensive emergency management plans.

The bill takes effect on July 1, 2020.

### IV. Constitutional Issues:

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

Article VII, subsection (a) of section 18 of the State Constitution provides that cities and counties are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

---

<sup>6</sup> Florida House of Representatives, Select Committee on Hurricane Response & Preparedness Final Report (January 16, 2018), on page 63, available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2978&Session=2018&DocumentType=General%20Publications&FileName=SCHRP%20-%20Final%20Report%20online.pdf> (last visited January 23, 2020).

<sup>7</sup> The Division of Emergency Management, *2014 State of Florida Comprehensive Emergency Management Basic Plan*, available at <https://www.floridadisaster.org/globalassets/importedpdfs/2014-state-cemp-basic-plan.pdf> (last visited January 23, 2020).

Under the bill, counties may incur costs associated with designating and maintaining a shelter that can accommodate persons with pets. However, the mandate requirements do not apply to laws having an insignificant impact, which, for fiscal year 2020-2021, is forecast at slightly over \$2.1 million.<sup>8,9,10</sup> The fiscal impact of the bill on counties is indeterminate at this time.

If such costs are determined to exceed \$2.1 million in the aggregate, the bill may be binding on counties if the bill contains a finding of important state interest and meets one of the exceptions specified in the State Constitution (e.g., provision of funding or a funding mechanism or enactment by vote of two-thirds of the membership of each house).

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

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<sup>8</sup> Fla. Const. art. VII, s. 18(d).

<sup>9</sup> 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 Jan. 30, 2020).

<sup>10</sup> Based on the Florida Demographic Estimating Conference's December 3, 2019, population forecast for 2020 of 21,555,986. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Jan. 30, 2020).

**C. Government Sector Impact:**

The bill may have an indeterminate negative fiscal impact on counties in designating a shelter that can accommodate persons with pets that complies with FEMA policies and procedures and applicable safety procedures within local and state comprehensive emergency management plans. However, such expenses to maintain a pet shelter may be partially or fully reimbursable by FEMA. The number of counties with shelters that accommodate pets and which meet the bill's requirements is unknown.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 252.3568 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Community Affairs on February 10, 2020:**

The committee substitute removes language that required the county to “operate at least one” shelter that can accommodate persons with pets. Alternatively, the substitute requires counties to “designate a shelter that can accommodate persons with pets.” The committee substitute also makes a technical change to abbreviate the “Federal Emergency Management Agency” as “FEMA.”

**CS by Infrastructure and Security on January 27, 2020:**

- Requires the DOE and the DACS to assist the DEM in determining strategies for the emergency sheltering of persons with pets;
- Requires a county which maintains any designated shelters, to also designate and operate at least one shelter that can accommodate persons with pets; and
- Requires shelters to be in compliance with any applicable disaster assistance policies and procedures of the FEMA and with safety procedures regarding the sheltering of pets established in the shelter component of the local and state comprehensive emergency management plans.

**B. Amendments:**

None.

By the Committees on Community Affairs; and Infrastructure and Security; and Senators Bean, Book, and Cruz

578-03424-20

2020752c2

1 A bill to be entitled  
 2 An act relating to emergency sheltering of persons  
 3 with pets; amending s. 252.3568, F.S.; requiring the  
 4 Department of Education to assist the Division of  
 5 Emergency Management in determining strategies  
 6 regarding the evacuation of persons with pets;  
 7 requiring counties that maintain designated shelters  
 8 to designate a shelter that can accommodate persons  
 9 with pets; specifying requirements for such shelters;  
 10 providing an effective date.

11

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

13

14 Section 1. Section 252.3568, Florida Statutes, is amended  
 15 to read:

16 252.3568 Emergency sheltering of persons with pets.—

17 (1) In accordance with s. 252.35, the division shall  
 18 address strategies for the evacuation of persons with pets in  
 19 the shelter component of the state comprehensive emergency  
 20 management plan and shall include the requirement for similar  
 21 strategies in its standards and requirements for local  
 22 comprehensive emergency management plans. The Department of  
 23 Agriculture and Consumer Services and the Department of  
 24 Education shall assist the division in determining strategies  
 25 regarding this activity.

26 (2) If a county maintains designated shelters, it must also  
 27 designate a shelter that can accommodate persons with pets. The  
 28 shelter must be in compliance with applicable FEMA Disaster  
 29 Assistance Policies and Procedures and with safety procedures

Page 1 of 2

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

578-03424-20

2020752c2

30 regarding the sheltering of pets established in the shelter  
 31 component of both local and state comprehensive emergency  
 32 management plans.

33

Section 2. This act shall take effect July 1, 2020.

Page 2 of 2

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 10, 2020

---

I respectfully request that **Senate Bill # 752**, relating to Emergency Sheltering of Persons with Pets, be placed on the:

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

A handwritten signature in cursive script that reads "Aaron Bean".

---

Senator Aaron Bean  
Florida Senate, District 4

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/20

Meeting Date

752

Bill Number (if applicable)

Topic Emergency Sheltering of Persons w/ Pets

Amendment Barcode (if applicable)

Name Frank Bernardino

Job Title \_\_\_\_\_

Address 201 West Park Ave. Suite 100

Phone 561-718-2345

Street

Tallahassee

FL

32301

Email frankc@florida.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Palm Beach County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26

Meeting Date

752

Bill Number (if applicable)

Topic emergency sheltering of persons w/ pets

Amendment Barcode (if applicable)

Name Jared Rosenstein

Job Title Leg. Affairs Director

Address 2555 Shumard Oak Blvd

Phone 786-247-8716

Street

Tallahassee

City

FL

State

32311

Zip

Email jared.rosenstein@em.mylflorida.com

Speaking:  For  Against  Information

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

Representing Florida Division of Emergency Management

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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**BILL:** CS/SB 774

**INTRODUCER:** Governmental Oversight and Accountability Committee and Senator Diaz

**SUBJECT:** Public Records and Public Meetings/Applicants for President/State University or Florida College System Institution

**DATE:** February 24, 2020      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bouck</u>	<u>Sikes</u>	<u>ED</u>	<b>Favorable</b>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>
3.	<u>Bouck</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 774 makes confidential and exempt from public disclosure requirements any personal identifying information of an applicant for the position of president of a state university or Florida College System institution. The bill provides that the personal identifying information of an applicant included in a final group of applicants for president is no longer confidential and exempt from public record requirements at least 21 days before the date of a meeting at which either an interview of an applicant will be conducted or at which final action or a vote is to be taken on the offer of the employment of an applicant as president.

The bill also exempts from public meeting requirements any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or Florida College System institution, including any portion of a meeting that would disclose personal identifying information of such applicants. The bill provides that a complete recording must be made of any portion of a closed meeting, and any closed portion of such meeting may not be held off the record. The recording is also exempt from public disclosure requirements.

The bill specifies that the meeting exemption does not apply to any portion of a meeting held for the purpose of establishing qualifications for the position or establishing any compensation framework to be offered to an applicant. Additionally, any meeting held after a final group of applicants has been established at which an interview of an applicant is conducted or at which

final action or a vote is to be taken on the offer of the employment of an applicant as president must be open to the public.

The bill provides that the exemption is subject to the Open Government Sunshine Review Act, and so is repealed on October 2, 2025, unless saved from repeal by the Legislature.

The bill may have a minimal fiscal impact on state universities and Florida College System institutions.

The bill takes effect July 1, 2020.

## II. Present Situation:

### Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

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

### Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>5</sup>

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

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

<sup>3</sup> 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).

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

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

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>10</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup>

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

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.<sup>14</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

### **Open Meetings Laws**

The Florida Constitution provides that the public has a right to access governmental meetings.<sup>16</sup> Each collegial body must provide notice of its meetings to the public and permit the public to

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<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.07(1)(a), F.S.

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

<sup>11</sup> *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>12</sup> See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>13</sup> See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>14</sup> See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

<sup>15</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>16</sup> FLA. CONST., art. I, s. 24(b).

attend any meeting at which official acts are taken or at which public business is transacted or discussed.<sup>17</sup> This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.<sup>18</sup>

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,”<sup>19</sup> or the “Sunshine Law,”<sup>20</sup> 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.<sup>21</sup> The board or commission must provide the public reasonable notice of such meetings.<sup>22</sup> 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.<sup>23</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>24</sup> Failure to abide by open meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.<sup>25</sup> A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>29</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

<sup>19</sup> *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

<sup>20</sup> *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

<sup>21</sup> Section 286.011(1)-(2), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 286.011(6), F.S.

<sup>24</sup> Section 286.011(2), F.S.

<sup>25</sup> Section 286.011(1), F.S.

<sup>26</sup> Section 286.011(3), F.S.

<sup>27</sup> FLA. CONST., art. I, s. 24(c).

<sup>28</sup> *Id.*

<sup>29</sup> *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.

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records exemptions,<sup>30</sup> with specified exceptions.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup>

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

The Open Government Sunset Review Act<sup>34</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>35</sup> public records or open meetings exemptions, with specified exceptions.<sup>36</sup> 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.<sup>37</sup>

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>38</sup> 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;<sup>39</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>40</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>41</sup>

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<sup>30</sup> 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.).

<sup>31</sup> 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.

<sup>32</sup> Section 119.15(3), F.S.

<sup>33</sup> Section 119.15(6)(b), F.S.

<sup>34</sup> Section 119.15, F.S.

<sup>35</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>36</sup> 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.

<sup>37</sup> Section 119.15(3), F.S.

<sup>38</sup> Section 119.15(6)(b), F.S.

<sup>39</sup> Section 119.15(6)(b)1., F.S.

<sup>40</sup> Section 119.15(6)(b)2., F.S.

<sup>41</sup> Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.<sup>42</sup> In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>43</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>44</sup>

### **State University System and Florida College System Governance**

The State University System is composed of all public state universities.<sup>45</sup> The Board of Governors (BOG) has the authority to regulate the State University System pursuant to Art. IX, s. 7(d) of the State Constitution. The BOG is required to operate, regulate, control, and be fully responsible for the management of the whole university system.<sup>46</sup> Each state university is governed by a local board of trustees, which is subject to public record and open meetings laws.<sup>47</sup> The BOG establishes the powers and duties of the boards of trustees and may delegate its constitutional or statutory powers and duties to the boards of trustees as its designee.<sup>48</sup> The BOG establishes the personnel system for all state university employees and confirms the selection and reappointment of presidents by state university boards of trustees.<sup>49</sup>

The Legislature created the Florida College System (FCS) consisting of institutions<sup>50</sup> governed by boards of trustees.<sup>51</sup> The State Board of Education establishes the standards and guidelines for FCS institutions.<sup>52</sup> A local board of trustee governs each FCS institution.<sup>53</sup>

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<sup>42</sup> Section 119.15(6)(a), F.S. The specified questions are:

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

<sup>43</sup> See generally s. 119.15, F.S.

<sup>44</sup> Section 119.15(7), F.S.

<sup>45</sup> FLA. CONST art. IX, s. 7(b). The State University System is made up of 12 state universities, specified in s. 1000.21(6), F.S.

<sup>46</sup> FLA. CONST art. IX, s. 7(d). See also ss. 20.155(4)(a), 1001.70(3), 1001.705(2), and 1001.706(2)(a), F.S.

<sup>47</sup> FLA. CONST art. IX, s. 7(b)-(c). See also s. 1001.71(1), F.S.

<sup>48</sup> FLA. CONST. art. IX, s. 7(c). see also s. 1001.706(2)(b), F.S.

<sup>49</sup> Sections 1001.705(2)(k) and 1001.706(6)(a), F.S.

<sup>50</sup> See s. 1000.21(3), F.S., for a definition and list of each “Florida College System institution.” Such institutions constitute political subdivisions of the state operated by boards of trustees. See s. 1004.67 and ss. 1001.61-1001.64, F.S.

<sup>51</sup> Sections 1001.60, 1001.61(1) and (2), and 1001.64(2), F.S.

<sup>52</sup> Section 20.15(1), (2), and (5); see also s. 1001.02(1) and (6), F.S..

<sup>53</sup> FLA. CONST s. 8(b). See also ss. 1001.60(3) and 1001.64(2), F.S.

## State University and Florida College System Presidential Searches

Each state university board of trustees selects its university president, subject to confirmation of the candidate by the BOG and in accordance with BOG regulations. State universities and FCS institutions often establish search committees for filling a vacant president position. The purpose of a search committee is to locate qualified applicants who are interested in filling the position. The search committees may utilize consultants to aid them in their search.

BOG regulation specifies criteria to ensure that the search process is transparent, robust, and designed to attract highly qualified individuals.<sup>54</sup> Criteria include the requirements that a search committee be familiar, or demonstrate its ability to become familiar, with Florida's Sunshine laws,<sup>55</sup> and that the search committee maintain a webpage that includes search committee notices, agendas, and meetings; applicant lists; and means to provide input; for purposes of transparency.<sup>56</sup> Information obtained by a search committee or consultant, including applications and other information gathered by a committee or consultant regarding applicants, must be made available for copying and inspection upon request. In addition any meetings associated with the search process are open to the public.<sup>57</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 1004.098, F.S., to establish an exemption from public records and public meetings requirements for applicants for president of a state university or FCS institution.

The bill specifies that any personal identifying information of an applicant for president of a state university or FCS institution is confidential and exempt from public records requirements.

The bill provides that the personal identifying information of an applicant included in a final group of applicants for president of a state university or Florida College System institution is no longer confidential and exempt at least 21 days before the date of a meeting at which an interview of an applicant will be conducted or at which final action or a vote is to be taken on the offer of the employment of an applicant as president.

The bill exempts from public meetings requirements any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or FCS institution, including any portion of a meeting that would disclose personal identifying information of such applicants. The bill provides that a complete recording must be made of any portion of a meeting that is closed and any closed portion of such meeting may not be held off the record. The recording of the closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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<sup>54</sup> BOG Regulation 1.002(1).

<sup>55</sup> BOG Regulation 1.002(1)(b)ii.

<sup>56</sup> BOG Regulation 1.002(1)(c)i.

<sup>57</sup> FCS institutions and state universities are considered state agencies, subject to public records and public meetings laws. See *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983) (holding that a University of Florida screening committee was subject to Florida's Sunshine Law); *Rhea v. District Bd. Of Trustees of Santa Fe College*, 109 So. 3d. 851 at 855, n. 1 (Fla. 1st DCA 2013) (noting that Santa Fe College, as part of the Florida College System, is a state agency having a duty to provide access to public records).

The bill specifies that the public meeting exemption does not apply to:

- Any portion of a meeting held for the purpose of establishing qualifications for the position or establishing any compensation framework to be offered to an applicant for president of a state university or Florida College System institution.
- Any meeting held after a final group of applicants for president of a state university or Florida College System institution has been established at which an interview of an applicant is conducted or at which final action or a vote is to be taken on the offer of the employment of an applicant as president.

The exemption from public records and public meetings established in the bill is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 2**, pursuant to a requirement in the State Constitution, sets forth the public necessity justifying the exemption.<sup>58</sup> The bill asserts that applicants for president who are currently employed could jeopardize their current positions if it were known that they were seeking employment elsewhere. Further, the bill specifies that an exemption is necessary to allow an institution search committee to have the most experienced and desirable pool of qualified applicants from which to fill the position of president.

The bill takes effect July 1, 2020.

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

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

Not applicable. The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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

###### ***Vote Requirement***

Article I, 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 personal identifying information about applicants for the position of president at a state university or Florida College System (FCS) institution, 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 two of the bill contains a statement of public necessity for the exemption.

---

<sup>58</sup> FLA. CONST art. I, s. 24(c).

***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect personal identifying information of applicants for the position of president of a state university or FCS institution. This bill exempts only personal identifying information of such individuals, and portions of meetings where such information is discussed, from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

**C. Government Sector Impact:**

The governmental agencies will incur costs related to the redaction of records in responding to public records requests.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The First Amendment Foundation has opposed the exemption established in the bill as contrary to the public interest.<sup>59</sup>

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<sup>59</sup> First Amendment Foundation, *SB 774 Exemption/University President Searches* (Jan. 6, 2020), available at <https://floridafaf.org/wp-content/uploads/2020/01/SB-774-University-Presidents.pdf>.

**VIII. Statutes Affected:**

This bill creates section 1004.098 of the Florida Statutes.

This bill creates an unnumbered section of law.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Governmental Oversight and Accountability on February 17, 2020:**

The committee substitute:

- Removes the requirement that a final group of applicants constitutes three or more;
- Provides for the transcription and recordation of any portion of a closed meeting;
- Makes other non-substantive changes; and
- Delays the effective date to July 1, 2020.

**B. Amendments:**

None.

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

585-03768-20

2020774c1

1 A bill to be entitled  
2 An act relating to public records and public meetings;  
3 creating s. 1004.098, F.S.; providing an exemption  
4 from public records requirements for any personal  
5 identifying information of an applicant for president  
6 of a state university or Florida College System  
7 institution; specifying that personal identifying  
8 information of applicants who comprise a final group  
9 of applicants is no longer confidential and exempt at  
10 a time certain; providing an exemption from public  
11 meeting requirements for any portion of a meeting held  
12 for the purpose of identifying or vetting applicants  
13 for president of a state university or Florida College  
14 System institution, including any portion of a meeting  
15 that would disclose identifying information of such  
16 applicants; requiring a recording to be made of any  
17 portion of a closed meeting; providing that no portion  
18 of a closed meeting may be held off the record;  
19 providing that the recording of any closed portion of  
20 a meeting is exempt from public record requirements;  
21 specifying that certain meetings are not exempt from  
22 public meeting requirements; providing for future  
23 legislative review and repeal of the exemptions;  
24 providing a statement of public necessity; providing  
25 an effective date.

26  
27 Be It Enacted by the Legislature of the State of Florida:

28  
29 Section 1. Section 1004.098, Florida Statutes, is created

Page 1 of 4

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

585-03768-20

2020774c1

30 to read:  
31 1004.098 Applicants for president of a state university or  
32 Florida College System institution; public records exemption;  
33 public meetings exemption.-  
34 (1) (a) Any personal identifying information of an applicant  
35 for president of a state university or Florida College System  
36 institution is confidential and exempt from s. 119.07(1) and s.  
37 24(a), Art. I of the State Constitution.  
38 (b) The personal identifying information of an applicant  
39 included in a final group of applicants for president of a state  
40 university or Florida College System institution is no longer  
41 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
42 of the State Constitution at least 21 days before the date of a  
43 meeting at which an interview of an applicant will be conducted  
44 or at which final action or a vote is to be taken on the offer  
45 of the employment of an applicant as president.  
46 (2) (a) Any portion of a meeting held for the purpose of  
47 identifying or vetting applicants for president of a state  
48 university or Florida College System institution, including any  
49 portion of a meeting that would disclose personal identifying  
50 information of such applicants, is exempt from s. 286.011 and s.  
51 24(b), Art. I of the State Constitution.  
52 (b) A complete recording must be made of any portion of a  
53 meeting that is closed pursuant to paragraph (a), and any closed  
54 portion of such meeting may not be held off the record. The  
55 recording of the closed portion of a meeting is exempt from s.  
56 119.07(1) and s. 24(a), Art. I of the State Constitution.  
57 (c) The public meeting exemption provided in paragraph (a)  
58 does not apply to:

Page 2 of 4

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

585-03768-20

2020774c1

59 1. Any portion of a meeting held for the purpose of  
 60 establishing qualifications for the position or establishing any  
 61 compensation framework to be offered to an applicant for  
 62 president of a state university or Florida College System  
 63 institution.

64 2. Any meeting held after a final group of applicants for  
 65 president of a state university or Florida College System  
 66 institution has been established at which an interview of an  
 67 applicant is conducted or at which final action or a vote is to  
 68 be taken on the offer of the employment of an applicant as  
 69 president.

70 (3) This section is subject to the Open Government Sunset  
 71 Review Act in accordance with s. 119.15 and shall stand repealed  
 72 on October 2, 2025, unless reviewed and saved from repeal  
 73 through reenactment by the Legislature.

74 Section 2. The Legislature finds that it is a public  
 75 necessity that any personal identifying information of an  
 76 applicant for president of a state university or Florida College  
 77 System institution be made confidential and exempt from s.  
 78 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 79 State Constitution. The Legislature also finds that it is a  
 80 public necessity that any portion of a meeting held for the  
 81 purpose of identifying or vetting applicants for president of a  
 82 state university or Florida College System institution,  
 83 including any portion of a meeting that would disclose personal  
 84 identifying information of such applicants, be made exempt from  
 85 s. 286.011, Florida Statutes, and s. 24(b), Article I of the  
 86 State Constitution, and that the recording of such meeting be  
 87 made exempt from s. 119.07(1), Florida Statutes, and s. 24(a),

Page 3 of 4

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585-03768-20

2020774c1

88 Article I of the State Constitution. The task of filling the  
 89 position of president of a state university or Florida College  
 90 System institution is often conducted by an executive search  
 91 committee. Many, if not most, applicants for such a position are  
 92 currently employed at another job at the time they apply and  
 93 could jeopardize their current positions if it were to become  
 94 known that they were seeking employment elsewhere. These  
 95 exemptions from public records and public meeting requirements  
 96 are needed to ensure that such a search committee can avail  
 97 itself of the most experienced and desirable pool of qualified  
 98 applicants from which to fill the position of president of a  
 99 state university or Florida College System institution. If  
 100 potential applicants fear the possibility of losing their  
 101 current jobs as a consequence of attempting to progress along  
 102 their chosen career path or simply seeking different and more  
 103 rewarding employment, failure to have these safeguards in place  
 104 could have a chilling effect on the number and quality of  
 105 applicants available to fill the position of president of a  
 106 state university or Florida College System institution.

107 Section 3. This act shall take effect July 1, 2020.

Page 4 of 4

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20

Meeting Date

774

Bill Number (if applicable)

Topic Public Records and Public Meetings

Amendment Barcode (if applicable)

Name Kristin Whitaker

Presidential Search

Job Title Vice Chancellor State University System

Address

Street

Phone 850-566-9217

City

State

Zip

Email

Speaking:  For  Against  Information

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

Representing State Universities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20  
Meeting Date

SB 779  
Bill Number (if applicable)

Topic SB 774 - President Search

Amendment Barcode (if applicable)

Name Maron Balinsky

Job Title Professor, Science

Address 3200 Locksley Ln.

Phone (850) 980-1949

Tallahassee FL 32312  
City State Zip

Email balinsky1@gmail.com

Speaking:  For  Against  Information

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

Representing United Faculty of Florida - Tallahassee Community College

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/20  
Meeting Date

774  
Bill Number (if applicable)

Topic Sunshine Law

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Job Title \_\_\_\_\_

Address 135 S. Monroe  
Street

Phone 850-224-6926

Tallahassee FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida AFL-CIO

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020

Meeting Date

SB 774

Bill Number (if applicable)

Topic Public Records Secret Search

Amendment Barcode (if applicable)

Name Dr. Ana Cierieszko

Job Title Legislative Director

Address 11014 N. Kendall Drive

Phone

Street

Miami

FL

33176

City

State

Zip

Email

Speaking: For [ ] Against [x] Information [ ]

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

Representing United Faculty of Miami Dade College

Appearing at request of Chair: Yes [ ] No [x]

Lobbyist registered with Legislature: Yes [x] No [ ]

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-26-20

Meeting Date

774

Bill Number (if applicable)

Topic Secret President Searches @ Colleges/Univ.

Amendment Barcode (if applicable)

Name Marshall Ogletree

Job Title Executive Director

Address 115 N. Calhoun St., Suite 6  
Street

Phone 850-224-8220

Tallahassee FL 32301  
City State Zip

Email marshall.ogletree@floridaea.org

Speaking:  For  Against  Information

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

Representing United Faculty of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/20  
Meeting Date

774  
Bill Number (if applicable)

Topic Presidential Searches

Amendment Barcode (if applicable)

Name Dr. Karen Morian

Job Title President

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

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing United Faculty of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/2020

Meeting Date

SB 0774

Bill Number (if applicable)

Topic Public Records; Public meetings ... Presidents

Amendment Barcode (if applicable)

Name April D. Isaacs

Job Title Teacher

Address 1911 Kings Pt. Blvd.

Phone (407) 414-1670

Street

Kissimmee, FL

34744

Email adisacc0039@hotmail.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Osceola County <sup>self</sup> Education Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

2-26-2020

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

S, B 0774

Meeting Date

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Bryan Porter

Job Title Electrician

Address 24961 W. E. 135<sup>th</sup> St.

Phone 386-682-8243

Street

Salt Springs

FL

32134

City

State

Zip

Email Bp179@yahoo.com

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020  
Meeting Date

SB 0774  
Bill Number (if applicable)

Topic Public Records & Public Meetings / Applicants for Pres Amendment Barcode (if applicable)

Name Charla S Fox

Job Title Teacher

Address 16627 Kestral Cir  
Street

Phone 239-940-5095

Ft. Myers FL 33966  
City State Zip

Email charlasfox@aol.com

Speaking:  For  Against  Information

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

Representing ~~Teachers Assoc of Lee County~~ Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020

Meeting Date

SB 774

Bill Number (if applicable)

Topic College and University President Searches

Amendment Barcode (if applicable)

Name Caitlin Gille

Job Title Assoc. Professor

Address 3410 Riverview Dr

Phone 352 573 1776

Street

Tampa

FL

33604

City

State

Zip

Email cngille@gmail.com

Speaking: [ ] For [X] Against [ ] Information

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

Representing myself

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

02/26/2020

Meeting Date

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

SB774

Bill Number (if applicable)

Topic Public Records Secret Search

Amendment Barcode (if applicable)

Name Mitzi Powell

Job Title Public school teacher

Address P.O. Box 929 - 4308 Church Ave

Phone 863-445-0215

Street Bowling Green, FL 33834

Email mitzip79@hotmail.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Myself

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-26-20

Meeting Date

SB 774

Bill Number (if applicable)

Topic Public Records, secret search

Amendment Barcode (if applicable)

Name April Clark

Job Title Public Educator

Address 108 Robin Ave

Phone (863) 253-9339

Street

Sebring

FL

33870

City

State

Zip

Email Aprilr-21@yahoo.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing self

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020

Meeting Date

SB 774

Bill Number (if applicable)

Topic Public Records Secret Search

Amendment Barcode (if applicable)

Name Kimbra Hanshaw

Job Title Teach

Address 1687 Steve Roberts Spec.

Phone 863-781-7931

Street

Zolfo Springs FL 33890

City

State

Zip

Email KimHanshaw@gmail.com

Speaking: [ ] For [X] Against [ ] Information

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

Representing Myself

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020  
Meeting Date

SB 774  
Bill Number (if applicable)

Topic Public Records Secret Search

Amendment Barcode (if applicable)

Name Laura Lovett - Estima

Job Title District Records Clerk

Address 31610 Avenue Q

Phone 772-332-8229

Street  
Fort Pierce FL 34947  
City State Zip

Email maladi.luv68@gmail.com

Speaking:  For  Against  Information

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

Representing ~~Education Association of St. Lucie~~ Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020

Meeting Date

SB 0774

Bill Number (if applicable)

Topic Public Records/Applicants for ...

Amendment Barcode (if applicable)

Name Eric Rodriguez

Job Title Teacher

Address 8833 141 lane

Phone (386) 249-0923

Street

Live Oak FL 32060

Email ERIC.Rodriguez@floridgea.org

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information

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

Representing

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

02/26/2020 Meeting Date

SB 0774 Bill Number (if applicable)

Topic Public Records and Public Meetings

Amendment Barcode (if applicable)

Name Samantha Mrozowski

Job Title Teacher

Address 4115 Grass Ave

Phone 863-464-7356

Sebring FL 33875

Email spage1983@gmail.com

Speaking: For Against Information

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

Representing myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/20  
Meeting Date

SB 0774  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Colleen Peterson

Job Title teacher

Address 958 SW Whittier Terr.  
Street

Phone 772-224-5545

Port St. Lucie, FL 34953  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020 Meeting Date

SB 0774 Bill Number (if applicable)

Topic Public Records and Public Meetings

Amendment Barcode (if applicable)

Name Nicholas Mrozowski

Job Title Teacher

Address 4115 GRASS AVE Street

Phone 386-747-6510

SEBRING FL 33875 City State Zip

Email nick.mroz@gmail.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing MYSELF

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-26-2020

Meeting Date

SB 0774

Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name JOHN BAUMAN

Job Title \_\_\_\_\_

Address 5917 VIA VERMILYA # 105

Street

Phone 561 358 8552

LAKE WORTH

City

FL

State

33462

Zip

Email JAB721@ATT.NET

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/2020  
Meeting Date

0774  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Kevin Hanson

Job Title Teacher

Address 4900 SW 46th Ct  
Street

Phone 3522010135

Ocala FL 34474  
City State Zip

Email kevinrhanson@gmail.com

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

26 FEBRUARY 2020  
Meeting Date

SB 774  
Bill Number (if applicable)

Topic PUBLIC RECORDS SECRET SEARCH

Amendment Barcode (if applicable)

Name KIM SMITH

Job Title SELF

Address 7024 GLENVIEW DR

Phone \_\_\_\_\_

Street

TAMPA  
City

FL  
State

33619  
Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-26-2020  
Meeting Date

SB 774  
Bill Number (if applicable)

Topic Public Records - Secret Search

Amendment Barcode (if applicable)

Name Barbara Budgett

Job Title Teacher

Address 13706 41<sup>st</sup> Lane N.  
Street

Phone 561-436-9484

Royal Palm Beach FL 33411  
City State Zip

Email budgett b117@gmail.com

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-26-2020  
Meeting Date

0774  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Lauren Duckworth

Job Title Teacher

Address 4900 SW 46<sup>th</sup> Ct

Phone 352-229-1140

Street

Ocala  
City

FL  
State

34474  
Zip

Email laurenduck@gmail.com

Speaking:  For  Against  Information

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

Representing myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-26-2020

Meeting Date

SB 774

Bill Number (if applicable)

Topic PUBLIC RECORDS SECRET SEARCH

Amendment Barcode (if applicable)

Name FRANK ANGEL

Job Title

Address 2180 VIA EDEN Street

Phone

BOCA RATON FL. 33433 City State Zip

Email

Speaking: [ ] For [ ] Against [ ] Information

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

Representing SELF

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-26-20

Meeting Date

SB 774

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Jayne Walker

Job Title

Address 1437 Quailen St

Phone 407-404-8047

Street

Orlando FL 32804

Email Jaywanne@erol.com

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information

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

Representing SELF

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20 Meeting Date

SB 779 Bill Number (if applicable)

Topic Public Records Secret Search

Amendment Barcode (if applicable)

Name James C. Deane

Job Title

Address 2820 Cypress Lane Street

Phone 407-625-9511

Orlando, FL 32804 City State Zip

Email

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20 Meeting Date

SB 774 Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Reginald Maddox

Job Title Postal Clerk

Address 6505 Alta Monte Dr

Phone 813-992-6096

Street

Tampa

FL

33634

City

State

Zip

Email maddoxdb@gmail.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing myself

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20  
Meeting Date

SB774  
Bill Number (if applicable)

Topic Public Records Secret Search

Amendment Barcode (if applicable)

Name Trevor Chapman

Job Title Electrician

Address 2602 NE 6th St  
Street

Phone 850-441-8340

Ocala FL 34470  
City State Zip

Email Wakullafootball60@gmail.com

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20

Meeting Date

774

Bill Number (if applicable)

Topic University Pres

Amendment Barcode (if applicable)

Name Marws Dixon

Job Title

Address Street

Phone

City

State

Zip

Email

Speaking: [ ] For [ ] Against [ ] Information

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

Representing SEIU FLORIDA

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-26-2020

Meeting Date

SB 774

Bill Number (if applicable)

Topic Public Records Secret Search

Amendment Barcode (if applicable)

Name Andy Starling

Job Title \_\_\_\_\_

Address Bronson  
Street

Phone \_\_\_\_\_

Bronson FL 32621  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

9/26/20

Meeting Date

774

Bill Number (if applicable)

Topic Smoking Law

Amendment Barcode (if applicable)

Name William Lawson

Job Title Field Representative

Address 595 W. Church St

Phone 407-257-6081

Orlando FL 32805

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020 Meeting Date

SB 0774 Bill Number (if applicable)

Topic Public Records & Public Meetings / Applicants

Amendment Barcode (if applicable)

Name Paul Hamilton

Job Title Teacher

Address 176 SE 27th Way Street

Phone (561) 236-1534

Boynton Beach FL 33435 City State Zip

Email vade176@gmail.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Myself

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26

Meeting Date

#SB 0774

Bill Number (if applicable)

Topic Public Records + Public meetings / App for Pres Amendment Barcode (if applicable)

Name Nicolette Owens

Job Title hg school educator

Address 5131 POA Armino Landings Blvd. Street

Phone 472-267-0827

FOA Pierce Fla. 34947 City State Zip

Email menicko@yahoo.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing myself

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020  
Meeting Date

SB 774  
Bill Number (if applicable)

Topic Public Records Secret Search

Amendment Barcode (if applicable)

Name Marcia Beasley

Job Title Retired

Address 12009 Dawn Vista DR

Phone 813 431 9717

Street

Riverside

FL

33578

City

State

Zip

Email mbeasley547@gmail.com

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20

Meeting Date

SB 0774

Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name JASON SORENSON

Job Title ELECTRICAL WORKERS

Address 174 GARDEN AVE

Phone 386-215-5481

Street

OAK HILL FL 32759

Email

City

State

Zip

Speaking:  For  Against  Information

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

Representing MYSELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20 Meeting Date

774 Bill Number (if applicable)

Topic Public Records + Public Meetings/Applicants for President Amendment Barcode (if applicable)

Name Lore Allen

Job Title Middle School Dean of Students

Address 618 Robin Ln Street

Phone

Kissimmee FL 34759 City State Zip

Email

Speaking: [ ] For [ ] Against [ ] Information

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

Representing self

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

02/26/2020

Meeting Date

SB  
TTW

Bill Number (if applicable)

Topic PUBLIC RECORDS SECRET SEARCH

Amendment Barcode (if applicable)

Name CHERANIA SMITH

Job Title ORGANIZER

Address 2718 CARDLEWOOD CT.

Phone 407-225-3731

Street

APOPKA FL 32703

City

State

Zip

Email CSMITH@ORSSI.ORG

Speaking:  For  Against  Information

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

Representing MYSELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

02/26/2020  
Meeting Date

SB 0774  
Bill Number (if applicable)

Topic Public Records and Public Meetings - Applicants for President

Amendment Barcode (if applicable)

Name Melisse Merriweather

Job Title Instructional Paraprofessional

Address 24116 NE 32<sup>nd</sup> St.  
Street

Phone 352.299.0456

Ocala, FL  
City

State

34479  
Zip

Email mmkiadt7@yahoo.com

Speaking:  For  Against  Information

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

Representing Individual

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-26-2020

Meeting Date

SB 774

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Adam Campbell

Job Title

Address 3738 Kenyon Road

Phone 561-452-7748

Street

Lake Worth FL 33461

City

State

Zip

Email

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20

Meeting Date

SB 0724

Bill Number (if applicable)

Topic Public Records & Public Meetings / Applicants

Amendment Barcode (if applicable)

Name Michael Nelson

Job Title Heavy Equipment Operator

Address 1628 SW 4th Street

Phone 352 497 8041

Street

Ocala

FL

State

34471

Zip

Email

Speaking: [ ] For [ ] Against [ ] Information

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

Representing My self

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020  
Meeting Date

774  
Bill Number (if applicable)

Topic Public Records Secret Search

Amendment Barcode (if applicable)

Name Rob Kriete

Job Title President Hillsborough Classroom Teachers Association

Address 6708 Providence Road  
Street

Phone 813 787 8351

Riverview FL 33578  
City State Zip

Email Rob.Kriete@gmail.com

Speaking:  For  Against  Information

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

Representing ~~MATA~~ Individual

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020 Meeting Date

774 Bill Number (if applicable)

Topic Public Records & Public Meetings/Applicants for Presidents ... Amendment Barcode (if applicable)

Name Chris Rusnak

Job Title Teacher

Address 512 Cliff Drive Street

Phone 813-943-3972

Temple Terrace FL 33617 City State Zip

Email tigerquan@yahoo.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing [scribbles] SELF!

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

26 Feb 2020 Meeting Date

SB 774 Bill Number (if applicable)

Topic Public Records Search

Amendment Barcode (if applicable)

Name Johnny A. Green

Job Title

Address 10977 Avelar Ridge Dr.

Phone 813-767-8865

Riverview FL 33578

Email JohnnyAlexGreen@hotmail.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

07-26-2020

Meeting Date

0774

Bill Number (if applicable)

Topic PUBLIC RECORDS -

Amendment Barcode (if applicable)

Name ROBERT CHAPMAN

Job Title STATE EMPLOYEE

Address 3622 WILLIAM RAY ROAD

Phone \_\_\_\_\_

Street

PLANT CITY FLORIDA 33565

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing SELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020 Meeting Date

SB774 Bill Number (if applicable)

Topic Public Records, Secret Search

Amendment Barcode (if applicable)

Name Natalie Hayes

Job Title Longshore man

Address 7119 Pender Way

Phone

Orlando FL 32822

Email Nrhayes809@yahoo

Speaking: For Against Information

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

02/26/2020

Meeting Date

SB 774

Bill Number (if applicable)

Topic Public Records Search <sup>Secret</sup>

Amendment Barcode (if applicable)

Name Veronica McBurse

Job Title Longshoreman

Address 7119 Pender Way

Phone 407-276-1423

Street

Orlando FL 32822

Email vmcburse@gmail.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/2020 Meeting Date

SB 774 Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Shaquille Mackey

Job Title

Address Street

Phone

City State Zip

Email

Speaking: For Against Information

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

Representing International Longshoreman Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

2/26/2020 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)  
Meeting Date

774  
Bill Number (if applicable)

Topic Secrecy - Univ. President Search

Amendment Barcode (if applicable)

Name Cheryl Schroeder

Job Title \_\_\_\_\_

Address 332 Easton Dr.

Phone 813-368-7124

Lakeland, FL 33803

Email cschroeder@wcff1.org

City State Zip

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

2/26/20

Meeting Date

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

774

Bill Number (if applicable)

Topic Public Records Secret Search

Amendment Barcode (if applicable)

Name Serena James

Job Title Cosmetologist

Address 5237 Champagne Cir

Phone 7703638181

Street

City

Mando FL 32806

State

Zip

Email Smukky715@gmail

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20

Meeting Date

774

Bill Number (if applicable)

Topic Public Records and Public Meetings for President

Amendment Barcode (if applicable)

Name Barry Tillis

Job Title

Address 1134 Orwell Ave Street

Phone 407 432 4624

Orlando FL 32809 City State Zip

Email BarryTillis@gmail.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Self

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/2020

Meeting Date

SB 774

Bill Number (if applicable)

Topic Public Record Search Secret

Amendment Barcode (if applicable)

Name Dr. Mitchell Pearl

Job Title Teacher

Address 315 63rd St NW

Phone 941-730-4885

Street

Bradenton

FL

State

34209

Zip

Email mitchellpearl@yahoo.com

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/20

Meeting Date

SB 774

Bill Number (if applicable)

Topic Public Records Secret Search

Amendment Barcode (if applicable)

Name William Wallin

Job Title Teacher

Address 5009 98th Ave East

Phone 941-730-7196

Street

Parrish

FL

34219

City

State

Zip

Email wwallin7@gmail.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Myself

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

02/26/2020

Meeting Date

SB 774

Bill Number (if applicable)

Topic Public Records Secret Search

Amendment Barcode (if applicable)

Name Pam Denton

Job Title teacher

Address 1244 Stony Creek Way

Phone 850-631-1032

Street

Tallahassee

FL

32317

City

State

Zip

Email pamela1denton@gmail

Speaking: [ ] For [ ] Against [ ] Information

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

Representing myself

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-26-2020

Meeting Date

774

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Roger Simmermaker

Job Title CEO / President

Address 13112 Aronovink Ln.

Phone 407-234-4626

Street

Orlando

FL

32828

City

State

Zip

Email how2buyamericain@gmail.com

Speaking:  For  Against  Information

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

Representing Consumer Patriotism Corp

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

26 Feb 20  
Meeting Date

SB 1400  
SB 774  
SD 7062  
Bill Number (if applicable)

Topic Const. Amend. Public Rec. Amendment Barcode (if applicable)

Name Bob Hippen Credit Search

Job Title Retired Labor #517

Address 1540 C.R. 309 Phone \_\_\_\_\_  
Street

Georgetown FL 32139 Email \_\_\_\_\_  
City State Zip

Speaking:  For  Against  Information

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

Representing The People of U.S.A.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1050

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Diaz

SUBJECT: Disaster Volunteer Leave for State Employees

DATE: February 24, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Favorable</u>
3.	<u>Ponder</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1050 substantially amends s. 110.120, F.S., the Florida Disaster Volunteer Leave Act (the Act). The CS broadens the definition of the term “disaster” to mean an event that results in a state of emergency as declared by the governor of this state or any other state or territory in the United States.

The CS adds two terms to the definition section of the Act: “disaster area” and “volunteer.”

The CS requires a request for disaster leave be made by the employee and specifies that an employing agency must verify the employee’s volunteer status before granting leave.

The CS provides that leave for disasters occurring outside the boundaries of this state but within the United States requires the approval of the head of the employee’s employing agency.

The CS provides that an employee receiving disaster leave must attest to his or her employing agency that he or she has completed his or her volunteer service and must specify the period of time served as a volunteer for that event and a description of the disaster response or recovery services provided.

The CS provides for an effective date of July 1, 2020.

## II. Present Situation:

### Executive Branch

Chapter 110, Florida Statutes, provides the employment policy of the state. The Legislature has declared that:

[i]t is the purpose of this chapter to establish a system of personnel management. This system shall provide means to recruit, select, train, develop, and maintain an effective and responsible workforce and shall include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, employee performance evaluations, affirmative action, and other related activities.<sup>1</sup>

Chapter 110, F.S., is divided into five parts: Part I deals with general state employment provisions; Part II covers the Career Service System; Part III pertains to the Senior Management Service System; Part IV relates to volunteers; and Part V deals with the Selected Exempt Service System. The Department of Management Services is charged with adopting administrative rules to effectuate the provisions of this chapter.<sup>2</sup>

Section 110.120, F.S., is entitled the “Florida Disaster Volunteer Leave Act” (the Act). The Act provides that an employee<sup>3</sup> of a state agency who is a certified disaster service volunteer of the American Red Cross (Red Cross), a 501(c)(3)<sup>4</sup> tax-exempt organization, may be granted a leave of absence with pay for not more than 15 working days in any 12-month period to participate in specialized disaster relief services for the Red Cross.<sup>5</sup> The term “state agency” is defined by the Act to mean “any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government.”<sup>6</sup> The Act specifies that a “disaster” comprises those “disasters designated at level II and above in the American National Red Cross regulations and procedures.”<sup>7</sup>

Leave may be granted upon the request of the Red Cross and the approval of the employee’s employing agency.<sup>8</sup> An employee granted leave under the Act shall not be deemed an employee of the state for purposes of workers’ compensation.<sup>9</sup> The Act provides that leave may be granted only for services related to a disaster occurring within the boundaries of the State of Florida,

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<sup>1</sup> Section 110.105(1), F.S.

<sup>2</sup> Section 110.1055, F.S.

<sup>3</sup> Other-personal-services employees (OPS), pursuant to s. 110.131(3), F.S., are not eligible for any form of paid leave. Thus, for an OPS employee who requests and is approved leave to provide disaster relief services, such leave of absence will be without pay.

<sup>4</sup> 26 U.S.C. § 501(c)(3), provides tax exemption for corporations and foundations that are operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

<sup>5</sup> Section 110.120(3), F.S.

<sup>6</sup> Section 110.120(2)(a), F.S.

<sup>7</sup> Section 110.120(2)(b), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

except that, with the approval of the Governor and Cabinet, leave may be granted for services in response to a disaster occurring within the boundaries of the United States.<sup>10</sup>

### **Tax-Exempt Nonprofit Organizations and Disaster Relief**

Tax-exempt organizations, such as the Red Cross and the Salvation Army, play a critical role in disaster relief and recovery efforts. As recognized by the Internal Revenue Service, “[p]roviding aid to relieve human suffering caused by a natural or civil disaster or an emergency hardship is charity in its most basic form.”<sup>11</sup> In the years since the 9/11 terrorist attacks, there has been a sharp growth in the creation of tax-exempt nonprofits that receive donations and disburse assistance following a disaster. For example, Team Rubicon became an established nonprofit 501(c)(3) organization in 2010 with the mission of providing disaster relief and giving American veterans a vital sense of purpose.<sup>12</sup> Team Rubicon was one of the first nonprofits to reach Haiti just five days after the 7.0 magnitude earthquake that killed at least 160,000 people.<sup>13</sup> World Vision, a registered 501(c)(4)<sup>14</sup> nonprofit organization, is an international partnership of Christians that, among other things, provides emergency relief to assist people afflicted by conflict or disaster.<sup>15</sup> During its Hurricane Katrina response, World Vision not only met emergency needs of the community but also participated in rebuilding efforts over a three year period.<sup>16</sup>

### **States of Emergency Declaration Process**

As a state’s chief executive officer, the governor is typically charged via a state’s constitution and/or statutes, with protecting the public safety and welfare of the people of that state.<sup>17</sup> Though the exact process may vary state to state, it is generally the governor who declares a state of emergency through the issuance of an executive order or proclamation to that effect.

In Florida, chapter 252, F.S., governs emergency management. The Governor is responsible for meeting the dangers presented to this state and its people by emergencies.<sup>18</sup> Section 252.36(1)(a), F.S., provides in pertinent part that “[i]n the event of an emergency beyond local control, the Governor . . . may assume” or delegate “direct operational control over all or any part of the emergency management functions within this state.” The Governor must declare a state of emergency by executive order or proclamation “if she or he finds an emergency has occurred or

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<sup>10</sup> *Id.*

<sup>11</sup> Publication 3833, *Disaster Relief, Providing Assistance through Charitable Organizations* <https://www.irs.gov/pub/irs-pdf/p3833.pdf> (last visited February 13, 2020).

<sup>12</sup> See <https://www.fema.gov/news-release/2017/11/12/4339/national-voad-and-other-voluntary-organizations-play-critical-role-housing> (Last visited February 13, 2020).

<sup>13</sup> See Kyle Dickman, *The Future of Disaster Relief Isn’t the Red Cross*, Outside Magazine, August 25, 2016, <https://www.outsideonline.com/2106556/team-rubicon-takes-red-cross> (last visited February 13, 2020).

<sup>14</sup> 26 U.S.C. § 501(c)(4), provides tax-exempt status to “[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.”

<sup>15</sup> See Our Mission Statement, <https://www.worldvision.org/about-us/mission-statement> (last visited February 13, 2020).

<sup>16</sup> See 2005 Hurricane Katrina: Facts, FAQ, and how to help <https://www.worldvision.org/disaster-relief-news-stories/2005-hurricane-katrina-facts#world-vision> (last visited February 13, 2020).

<sup>17</sup> See Patricia Sweeney & Ryan Joyce, *Gubernatorial Emergency Management Powers: Testing the Limits in Pennsylvania*, 6 PITT. J. ENVTL. PUB. HEALTH L. 149, 150 (2012).

<sup>18</sup> Section 252.36, F.S.

that the occurrence or the threat thereof is imminent.”<sup>19</sup> A state of emergency continues until terminated by the Governor by executive order or proclamation but may not continue “longer than 60 days unless renewed by the Governor.”<sup>20</sup> The Legislature may terminate a state of emergency at any time by a concurrent resolution.<sup>21</sup> If a state of emergency is terminated by the Legislature, the Governor must issue an executive order or proclamation ending the state of emergency.<sup>22</sup> Section 252.36, F.S., requires all executive orders or proclamations to “indicate the nature of the emergency, the area or areas threatened, and the conditions which have brought the emergency about or which make possible its termination.”<sup>23</sup>

### III. Effect of Proposed Changes:

**Section 1** revises s. 110.120(2), F.S., to amend the definition of “disaster” to mean an event that results in a state of emergency, as declared by executive order or proclamation issued by the Governor of this state, or any other state or territory of the United States.

The CS adds the terms “disaster area” and “volunteer” to the definitions section. “Disaster area” is defined to mean a location covered under a state of emergency, as declared by executive order or proclamation issued by the Governor of this state or any other state or territory of the United States. “Volunteer” is defined to mean an individual who has entered into an agreement with a tax-exempt nonprofit organization under s. 501(c)(3) or s. 501 (c)(4) of the Internal Revenue Code to provide nonpaid services to a disaster area for disaster response or recovery.

This section amends s. 110.120(3), F.S., to provide that a leave of absence with pay to serve as a volunteer may be granted for no more than 120 working hours (equivalent to 15 8-hour days) in any 12-month period. The CS requires that the request for leave be made by the employee and that the employee’s employing agency must verify the employee’s volunteer status prior to granting such leave for services related to a disaster within Florida. The approval of the head of the employing agency is required for any leave where the employee is providing volunteer services related to disasters occurring outside the boundaries of this state but within the states or territories of the United States.

The CS requires an employee granted leave to attest to his or her employing agency that he or she has completed his or her volunteer service for a disaster, and to specify the period of time for which he or she served as a volunteer for that event and a description of the disaster response or recovery services that the employee provided.

**Section 2** provides that the act will take effect on July 1, 2020.

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<sup>19</sup> Section 252.36(2), F.S.

<sup>20</sup> *Id.*

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

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

**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 government sector will continue to experience an impact in processing applications for disaster volunteer leave. While the CS requires the request be made by the employee as opposed to the Red Cross and specifies the employing agency must verify the employee's volunteer status prior to approval, this change will likely not have a substantial or disruptive impact.

The CS may have a slight negative impact on the government sector as it allows employees to request disaster leave to volunteer with any tax-exempt nonprofit under 501(c)(3) or 501(c)(4) and not solely the Red Cross. Thus, there may be more requests being submitted that an agency will have to process.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This CS substantially amends the following section of the Florida Statutes: 110.120

**IX. Additional Information:**

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

**CS by Governmental Oversight and Accountability on January 13, 2020:**

The committee substitute removes the legislative and judicial branches from the definition of “state agency” in s. 110.120(2), F.S., because those branches currently have broad discretionary authority to grant leave addressed by this bill.

- B. **Amendments:**

None.

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

585-02221-20

20201050c1

A bill to be entitled

An act relating to disaster volunteer leave for state employees; amending s. 110.120, F.S.; reordering, revising, and providing definitions; revising conditions under which an employee may be granted leave under the Florida Disaster Volunteer Leave Act; specifying requirements and limitations; providing an effective date.

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

Section 1. Section 110.120, Florida Statutes, is amended to read:

110.120 Administrative leave for disaster service volunteers.—

(1) SHORT TITLE.—This section ~~shall be known and~~ may be cited as the “Florida Disaster Volunteer Leave Act.”

(2) DEFINITIONS.—As used in this section, the term ~~following terms shall apply:~~

(c)(a) “State agency” means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government.

(a)(b) “Disaster” means an event that results in a state of emergency, as declared by executive order or proclamation issued by the Governor of this state or any other state or territory of the United States ~~includes disasters designated at level II and above in the American National Red Cross regulations and procedures.~~

(b) “Disaster area” means a location covered under a state

Page 1 of 3

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

585-02221-20

20201050c1

of emergency, as declared by executive order or proclamation issued by the Governor of this state or any other state or territory of the United States.

(d) “Volunteer” means an individual who has entered into an agreement with a tax-exempt nonprofit organization under s. 501(c)(3) or s. 501(c)(4) of the Internal Revenue Code to provide nonpaid services to a disaster area for disaster response or recovery.

(3) LEAVE OF ABSENCE.—An employee of a state agency ~~who is a certified disaster service volunteer of the American Red Cross~~ may be granted a leave of absence with pay for no not more than 120 working hours ~~15 working days~~ in any 12-month period to serve as a volunteer ~~participate in specialized disaster relief services for the American Red Cross.~~ Such leave of absence may be granted upon the request of the employee ~~American Red Cross~~ and upon ~~the~~ approval of the employee’s employing agency after verifying the employee’s volunteer status. An employee granted leave under this section ~~is shall~~ not be deemed to be an employee of the state for purposes of workers’ compensation. Leave under this section ~~act~~ may be granted only for providing volunteer ~~for~~ services related to a disaster occurring within the boundaries of this ~~the~~ state of Florida, except that, ~~with the approval of the Governor and Cabinet,~~ leave may be granted to an employee to provide volunteer ~~for~~ services in response to a disaster occurring within the states or territories ~~boundaries~~ of the United States upon approval of the head of the employee’s employing agency. An employee who is granted leave under this section must attest to his or her employing agency that he or she has completed his or her volunteer service for a disaster,

Page 2 of 3

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

585-02221-20

20201050c1

59 and must also specify the period of time for which he or she  
60 served as a volunteer for that event and a description of the  
61 disaster response or recovery services that the employee  
62 provided.

63 Section 2. This act shall take effect July 1, 2020.



**THE FLORIDA  
SENATE**

Tallahassee, Florida 32399-1100

**SENATOR MANNY DIAZ, JR.**  
36th District

**COMMITTEES:**  
Education, *Chair*  
Appropriations Subcommittee on Education,  
*Vice Chair*  
Appropriations Subcommittee on Health  
and Human Services  
Ethics and Elections  
Health Policy

**JOINT COMMITTEE:**  
Joint Select Committee on Collective  
Bargaining

February 18, 2020

Honorable Senator Lizbeth Benacquisto  
Chair  
Committee on Rules

Honorable Chair Benacquisto,

I respectfully request Senate Bill Number 1050 Disaster Volunteer Leave for State employees to be placed on the next committee agenda.

Sincerely appreciate your support.

A handwritten signature in cursive script, appearing to read "M. Diaz".

---

Senator Manny Diaz, Jr.  
Florida Senate, District 36

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

REPLY TO:

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

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

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/20/20  
Meeting Date

SB 2060  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Savannah Kelly

Job Title External Affairs Director

Address 2949 Raymond Diehl Rd  
Street

Phone (850) 608-2022

Tallahassee FL 32303  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Volunteer Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1258

INTRODUCER: Community Affairs Committee and Senators Diaz and Baxley

SUBJECT: Commercial Service Airports

DATE: February 24, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Miller</u>	<u>IS</u>	<b>Favorable</b>
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<b>Fav/CS</b>
3.	<u>Price</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1258 requires the Auditor General to conduct an operational and financial audit of each large-hub commercial service airport in the state. The bill additionally requires each member of the governing body of such airports to comply with the full and public disclosure of financial interests set out in Article II, section 8 of the State Constitution, if not already required to do so for another public office.

The bill also requires the governing body of each commercial service airport to establish and maintain a website to post specified information relating to the operation of the airport, and subjects such airports to certain requirements of ch. 287, F.S., relating to procurement. After an opportunity for public comment, a governing body must approve, award, or ratify as a separate line item on its agenda each contract executed by or on behalf of a commercial service airport in amounts exceeding a threshold of \$325,000. Approval of such contracts as part of a consent agenda is prohibited. Contracts and contract amendments for the purchase of commodities or services in excess of \$100,000, must utilize a competitive sealed bid process (unless a certain exception applies) and must be posted (with confidential information redacted) on the airport website.

Members of a governing body and employees of a commercial service airport are subjected to part II of Ch. 112, F.S., relating to the Code of Ethics for Public Officers and Employees, and must comply with the requirements for full and public disclosure of financial interests set out in section 8, Article II of the State Constitution. The bill also imposes on each member of a

governing body certain annual ethics training requirements but exempts members that have completed the training for another public office.

Beginning November 1, 2021, and each November 1 thereafter, the bill requires each commercial service airport to submit specified information to the Florida Department of Transportation (FDOT). The FDOT is required to review the information submitted by such airports and posted on the required websites to determine the accuracy of the information. Beginning January 15, 2022, and each January 15 thereafter, the FDOT must submit to the Governor, the Senate President, and the Speaker of the House of Representatives a report summarizing commercial service airport compliance with the bill's provisions. The FDOT is prohibited from expending any funds allocated to a commercial service airport, unless pledged for debt service until such airport demonstrates its compliance.

The bill appears to have no impact on state or local revenues. The fiscal impact on state and local expenditures is indeterminate. See the Fiscal Impact Statement for details.

The bill takes effect on October 1, 2020.

## II. Present Situation:

Twenty commercial service airports and 109 general aviation airports,<sup>1</sup> as well as hundreds of small private airports, currently operate in Florida. Commercial service airports are publicly-owned airports having at least 2,500 passenger boardings each year and receiving scheduled passenger service. General aviation airports are airports that do not have scheduled service or have less than 2,500 passenger boardings each year.<sup>2</sup>

Commercial service airports operating in this state vary in size from large-hub airports,<sup>3</sup> with over 20 million annual passenger boardings, to small municipal airports with approximately 10,000 annual passenger boardings.<sup>4</sup> Commercial service airports in Florida support approximately 1.1 million jobs have a total annual payroll of approximately \$47.3 billion, and a total annual economic impact of approximately \$144 billion.<sup>5</sup>

### *Airport Oversight*

The Federal Aviation Administration (FAA) is responsible for planning and developing a safe and efficient national airport system, including all programs related to airport safety and inspections and standards for airport design, construction, and operation. Federal law requires each commercial service airport to operate under a federal certificate and comply with federal

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<sup>1</sup> Florida Department of Transportation, *Florida Aviation System Plan Introduction*, available at: <https://www.fdot.gov/aviation/FASP2035> (last visited January 22, 2020).

<sup>2</sup> 49 U.S.C. s. 47102.

<sup>3</sup> A subsection of commercial airports are large-hub airports. Large-hub airports are commercial service airports that have at least 1 percent of the passenger boardings in the United States.

<sup>4</sup> See FAA, Commercial Service Airports, Rank Order based on calendar year 2018, December 20, 2019, available at: [https://www.faa.gov/airports/planning\\_capacity/passenger\\_allcargo\\_stats/passenger/media/cy18-commercial-service-enplanements.pdf](https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy18-commercial-service-enplanements.pdf) (last visited January 22, 2020).

<sup>5</sup> Florida Department of Transportation, *Florida Statewide Aviation Economic Impact Study*, March 2019, Executive Summary at p. 7, available at: <https://www.fdot.gov/aviation/economicimpact.shtm> (last visited January 22, 2020).

aviation requirements. The FAA is responsible for national airport planning and environmental and social requirements and establishes policies related to airport rates and charges, compliance with grant assurances, and airport privatization.<sup>6</sup>

In Florida, the FDOT is responsible for planning airport systems and overseeing the public airport system.<sup>7</sup> The owner or lessee of a proposed public airport<sup>8</sup> must receive FDOT approval before site acquisition, construction, or establishment of a public airport facility.<sup>9</sup> The FDOT is also responsible for licensing public airport facilities before the operation of aircraft to or from the facility and must inspect such facilities prior to licensing or license renewal.<sup>10</sup> Current law authorizes local governments to establish and operate airports<sup>11</sup> and governs airport zoning and land use issues.<sup>12</sup>

Neither state nor federal law establishes requirements for airport governance or ownership. As such, Florida airports operate under either a government department model (where the airport operates as a department of the local government) or an airport authority model (where the airport authority is created as either an independent or a dependent special district). Airport operation and administration is generally governed as part of the local government or special district that owns the airport.

### ***Commercial Service Airports in Florida***

As defined in 49 U.S.C. § 47102(7), a “commercial service airport means a public airport in a State that the Secretary determines has at least 2,500 passenger boardings each year and is receiving scheduled passenger aircraft service.” For the calendar year 2018, the FAA classified 519 airports as commercial service airports. Out of these airports, 19 are located in Florida.<sup>13</sup> The locations of these airports include Orlando, Miami, Fort Lauderdale, Tampa, West Palm Beach, Jacksonville, Sanford, Clearwater, Pensacola, Punta Gorda, Sarasota, Valparaiso, Panama City, Key West, Tallahassee, Daytona Beach, Melbourne, Gainesville, and Vero Beach.<sup>14</sup>

### ***Large-hub Airports in Florida***

The FAA provides that large-hub commercial airports are airports that facilitate 1 percent or more of the total annual passenger boardings in the U.S.<sup>15</sup> The Florida airports that currently

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<sup>6</sup> See the FAA website, *Airports*, available at: [https://www.faa.gov/about/office\\_org/headquarters\\_offices/arp/](https://www.faa.gov/about/office_org/headquarters_offices/arp/) (last visited January 22, 2020).

<sup>7</sup> Section 332.001, F.S.

<sup>8</sup> Section 330.27(6), F.S. For purposes of FDOT approval and licensure, the term “public airport” means a publicly or privately owned airport for public use.

<sup>9</sup> Section 330.30(1), F.S.

<sup>10</sup> Section 330.30(2), F.S.

<sup>11</sup> See ch. 332, F.S.

<sup>12</sup> See ch. 333, F.S.

<sup>13</sup> FAA Airport, Commercial Service Airport (Rank Order) based on Calendar Year 2018 (December 20, 2019), available at: [https://www.faa.gov/airports/planning\\_capacity/passenger\\_allcargo\\_stats/passenger/media/cy18-commercial-service-enplanements.pdf](https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy18-commercial-service-enplanements.pdf) (last visited February 18, 2020).

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

<sup>15</sup> See Federal Aviation Administration, *Airport Categories*, available at: [https://www.faa.gov/airports/planning\\_capacity/passenger\\_allcargo\\_stats/categories/](https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/categories/) (last visited February 14, 2020).

meet the criteria to be a large-hub airport are Orlando, Miami, Fort Lauderdale, and Tampa.<sup>16</sup> The table below portrays relevant information about these airports.

Airport	2018 Enplanements (passengers boarded) <sup>17</sup>	2018 Total Revenue	2018 Total Expenditures	End of 2018 Net Position
Orlando <sup>18</sup>	23,184,634	\$743,147,000	\$564,540,000	\$2,528,297,000
Miami <sup>19</sup>	21,025,210	\$920,968,000	\$997,026,000	\$1,228,566,000
Fort Lauderdale <sup>20</sup>	17,613,957	\$374,997,000	\$262,886,000	\$1,516,000,000
Tampa <sup>21</sup>	10,369,622	\$373,071,000	\$196,827,000	\$1,123,305,599

**FDOT Airport Funding**

The FDOT’s work program identifies aviation development projects and discretionary capacity improvement projects. To the maximum extent possible, the FDOT’s work program must remain consistent with the Florida Aviation System Plan and any approved and applicable local government comprehensive plans. The FDOT’s work program also includes any project with funds administered by the FDOT but undertaken and implemented by the airport operator. The FDOT’s aviation program assists airports in the areas of access, economic enhancement, development, improvement, and land acquisition in the way of matching funds. These matching funds assist local governments and airport authorities in planning, designing, purchasing, constructing, and maintaining public use aviation facilities.<sup>22</sup>

For commercial service airports, FDOT may provide up to 50 percent of the non-federal share if federal funding is available and up to 50 percent of the total project costs if federal funding is not available.<sup>23</sup> For Fiscal Year 2019-2020, FDOT was appropriated \$266 million from the State Transportation Trust Fund for Aviation Development Grants,<sup>24</sup> available to both commercial service airports and general aviation airports.<sup>25</sup>

<sup>16</sup> See Federal Aviation Administration, Commercial Service (Rank Order) 2018, available at: [https://www.faa.gov/airports/planning\\_capacity/passenger\\_allcargo\\_stats/passenger/media/preliminary-cy18-commercial-service-enplanements.pdf](https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/preliminary-cy18-commercial-service-enplanements.pdf) (last visited February 14, 2020).

<sup>17</sup> *Id.*

<sup>18</sup> See Greater Orlando Aviation Authority, Comprehensive Annual Financial Report 2018, available at: [https://flauditor.gov/pages/specialdistricts\\_efile%20rpts/2018%20greater%20orlando%20aviation%20authority.pdf](https://flauditor.gov/pages/specialdistricts_efile%20rpts/2018%20greater%20orlando%20aviation%20authority.pdf) (last visited February 14, 2020).

<sup>19</sup> See Miami-Dade Aviation Department, Comprehensive Annual Financial Report 2018, available at: <http://www.miami-airport.com/library/pdfdoc/Finance/Miami-Dade%20Aviation%20Department%209-30-18%20ISSUED%20CAFR.pdf> (last visited February 14, 2020).

<sup>20</sup> See Broward County Aviation Department, Financial Statements 2018, available at: <https://www.broward.org/Airport/Business/about/Documents/FLLfy18financialstatements.pdf> (last visited February 14, 2020).

<sup>21</sup> See Hillsborough County Aviation Authority, Financial Statements 2018, available at: [https://flauditor.gov/pages/specialdistricts\\_efile%20rpts/2018%20hillsborough%20county%20aviation%20authority.pdf](https://flauditor.gov/pages/specialdistricts_efile%20rpts/2018%20hillsborough%20county%20aviation%20authority.pdf) (last visited February 14, 2020).

<sup>22</sup> Section 332.007(2), F.S.

<sup>23</sup> FDOT website available at <https://www.fdot.gov/aviation/workProgram.shtm> (last visited January 22, 2020).

<sup>24</sup> Chapter 2019-115, L.O.F., Specific Appropriation 1940.

<sup>25</sup> FDOT Fiscal Year 2020 Aviation Work Program available at <https://fdotewp1.dot.state.fl.us/fmsupportapps/workprogram/Support/WPItemRept.ASPX?RF=WP&CT=I&FY=TRUE|FALSE|FALSE|FALSE|FALSE&RP=ITEM> (last visited January 22, 2020).

### ***FAA Airport Funding***

Along with state funding, airports receive federal grants administered by the FAA. The main grant program for federal funds is the Airport Improvement Program (AIP). The AIP provides grants to public agencies — and, in some cases, to private owners and entities — for the planning and development of public-use airports.

Eligible AIP projects include airport improvements related to enhancing airport safety, capacity, security, and environmental concerns. In general, airports may receive AIP funds for most airfield capital improvements or rehabilitation projects and, in some specific situations, for terminals, hangars, and nonaviation development. Certain professional services that are necessary for eligible projects (such as planning, surveying, and design) can also be eligible. The FAA must be able to determine that the projects are justified based on civil aeronautical demand. The projects must also meet federal environmental and procurement requirements. Airports typically record grant funds for the acquisition or construction of capital assets as capital contributions in financial statements.<sup>26</sup>

Airports accepting FAA grants are required to be audited following the provisions of the Single Audit Act of 1984 and certain requirements of the Title 2 U.S. Code of Federal Regulations Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements. Information related to the audit, including the schedule of expenditures of federal awards, schedule of findings, questioned costs, and the reports of an independent auditor, must be reported to the FAA under a separate cover to comply with grant conditions.<sup>27</sup>

For fiscal year 2018, the total amount of federal FAA funding appropriated to Florida airports through the AIP amounted to \$203,472,903.<sup>28</sup> As for Florida's large-hub airports (excluding Miami-Dade, which is not indicated as receiving AIP funds) in 2019, the FAA denotes the following AIP fund amounts for the stated purposes:<sup>29</sup>

- Fort Lauderdale/Hollywood International: \$24,716,313 to rehabilitate runway;
- Fort Lauderdale/Hollywood International: \$20,000,000 to extend runway;
- Orlando International: \$21,328,633 to rehabilitate runway;
- Tampa International: \$6,305,125 to install security equipment; and
- Tampa International: \$502,014 to conduct a noise compatibility plan study.

### ***Auditor General***

The position of the Auditor General is established by Article III, section 2 of the State Constitution.<sup>30</sup> The Auditor General is appointed to office to serve at the pleasure of the

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<sup>26</sup> Federal Aviation Administration, *Overview: What is AIP?* available at: <https://www.faa.gov/airports/aip/overview/> (last visited February 19, 2020).

<sup>27</sup> Federal Aviation Administration, *Grant Assurances (Obligations)*, available at: [https://www.faa.gov/airports/aip/grant\\_assurances/](https://www.faa.gov/airports/aip/grant_assurances/) (last visited February 18, 2020).

<sup>28</sup> Federal Aviation Administration, *FY 2018 Regular AIP and Supplemental Funding by State* (January 17, 2019), available at: [https://www.faa.gov/airports/aip/aip\\_supplemental\\_appropriation/media/FY-2018-Regular-AIP-and-Supplemental-Funding-by-State.pdf](https://www.faa.gov/airports/aip/aip_supplemental_appropriation/media/FY-2018-Regular-AIP-and-Supplemental-Funding-by-State.pdf) (last visited February 18, 2020).

<sup>29</sup> Federal Aviation Administration, *Office of Airports, FY 2019 AIP Grants Awarded*, available at: [https://www.faa.gov/airports/aip/grant\\_histories/media/FY2019-AIP-grants.pdf](https://www.faa.gov/airports/aip/grant_histories/media/FY2019-AIP-grants.pdf) (last visited February 18, 2020).

<sup>30</sup> Art. III, s. 2, FLA. CONST.

Legislature, by a majority vote of the members of the Joint Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.<sup>31</sup> The Auditor General must conduct audits, examinations, or reviews of government programs as well as audit the accounts of state agencies, state universities, state colleges, district school boards, and others as directed by the Joint Legislative Auditing Committee.<sup>32</sup> The Auditor General conducts operational and performance audits on public records and information technology systems and reviews all audit reports of local governmental entities, charter schools, and charter technical career centers.<sup>33</sup>

A financial audit is an examination of financial statements to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted under legal and regulatory requirements.<sup>34</sup> The purpose of an operational audit is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities following applicable laws, administrative rules, contracts, grant agreements, and other guidelines.<sup>35</sup>

In 2017, the Auditor General conducted an operational audit of the Hillsborough County Aviation Authority to review Tampa International Airport's 2012 Master Plan Capital Project.<sup>36</sup> Among the audit report findings, the Auditor General found that the Authority failed to meet several state laws, procurement policies, and budgeting requirements.<sup>37</sup>

More recently, at its meeting on December 12, 2019, the Joint Legislative Auditing Committee directed the Auditor General to perform a targeted operational audit of the Greater Orlando Aviation Authority.<sup>38</sup> However, the Auditor General has not conducted financial and operational audits of an entire airport's operation.<sup>39</sup>

### ***Financial Disclosure***

Florida ethics laws provide for two tiers of financial disclosure for public officers, candidates for public office, and certain public employees: full and public disclosure of financial interests (Form 6) and a statement of financial interests (Form 1).<sup>40</sup> The Florida Commission on Ethics oversees the financial disclosure filing process with the assistance of local qualifying officers.

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<sup>31</sup> Section 11.42(2), F.S.

<sup>32</sup> Section 11.45(2)(d)-(f), F.S.

<sup>33</sup> Section 11.45(7)(b), F.S.

<sup>34</sup> Section 11.45(1)(d), F.S.

<sup>35</sup> Section 11.45(1)(i), F.S.

<sup>36</sup> Chapter 2017-70, L.O.F. This audit was provided for in proviso language to Specific Appropriation 1862 in the 2017 General Appropriations Act.

<sup>37</sup> Florida Auditor General Operational Audit, Hillsborough County Aviation Authority Report No. 2018-080 (December 2017), available at: [https://flauditor.gov/pages/pdf\\_files/2018-080.pdf](https://flauditor.gov/pages/pdf_files/2018-080.pdf) (last visited February 18, 2020).

<sup>38</sup> Joint Legislative Auditing Committee, Meeting Summary, December 12, 2019, available at: <http://www.leg.state.fl.us/Data/Committees/Joint/JCLA/MeetingSummaries/121219.pdf> (last visited January 22, 2020).

<sup>39</sup> E-mail from Bruce Jeroslow, General Counsel, Florida Auditor General, to House committee staff, relating to HB 915, January 6, 2020 (on file in the Senate Infrastructure and Security Committee).

<sup>40</sup> Sections 112.3144 and 112.3145, F.S.

Article 2, section 8(a) of the State Constitution requires all elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees to file a Form 6. Additionally, members of certain expressway authorities, transportation authorities, bridge authorities, toll authorities, or expressway agencies are required to comply with these financial disclosure requirements.<sup>41</sup> Form 6 requires the filer to disclose his or her net worth and identify each asset and liability in excess of \$1,000 and its value together with either a copy of the person's most recent federal income tax return or a sworn statement identifying each separate source and amount of income exceeding \$1,000.

Form 1 requires less detail than Form 6 and is filed by certain state and local officers not subject to the full and public disclosure of financial interests, including local officers<sup>42</sup> and specified state employees. Form 1 requires filers to disclose their primary sources of income (other than from their public position), secondary sources of income (in certain circumstances), real property in Florida (other than a residence or vacation home in Florida), intangible personal property, liabilities, and interests in specified businesses.<sup>43</sup>

### ***State Procurement***

Chapter 287, F.S., provides statutory requirements for the procurement of goods and services by the state. The Legislature recognizes that fair and open competition is a basic tenet of public procurement. It is essential to the effective and ethical procurement of commodities and contractual services that there be a system of uniform procedures utilized by state agencies in managing and procuring commodities and contractual services, that detailed justification of agency decisions in the procurement of commodities and contractual services be maintained, and that adherence by the agency and the vendor to specific ethical considerations be required.<sup>44</sup>

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:<sup>45</sup>

- Single source contracts, which are 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, which are 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;
- Requests for proposal, 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, 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.

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<sup>41</sup> Section 112.3144(1)(b), F.S.

<sup>42</sup> Section 112.3145(1)(a), F.S., defines the term "local officer" to include every person who is elected to office in any political subdivision of the state, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office and any appointed member of any of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision of the state.

<sup>43</sup> Section 112.3145(3), F.S.

<sup>44</sup> Section 287.001, F.S.

<sup>45</sup> See ss. 287.012(6) and 287.057, F.S.

Florida establishes five categories of purchase thresholds and requires entities to follow certain conditions when funds are expended in these amounts. The categories and amounts are:<sup>46</sup>

- CATEGORY ONE: \$20,000.
- CATEGORY TWO: \$35,000.
- CATEGORY THREE: \$65,000.
- CATEGORY FOUR: \$195,000.
- CATEGORY FIVE: \$325,000.

For contracts for commodities or services in excess of \$35,000 (CATEGORY TWO), state agencies must utilize a competitive solicitation process,<sup>47</sup> however, certain contractual services and commodities are exempt from this requirement.<sup>48</sup>

### ***Federal Procurement***

Similar to state procurement, the federal government requires entities expending public funds to abide by certain administrative, procedural, contractual conditions. Procurements made under the Airport Improvement Program must adhere to the provisions outlined in 2 C.F.R. § 200.317-200.326.<sup>49</sup> This federal regulation provides for uniform standards an airport must apply to their procurement actions to maintain eligibility for grant funding under the AIP. Federal regulations encompass procurements for construction development, equipment acquisition, and selection of professional services (e.g., engineering and planning consultants).

### ***Code of Ethics for Public Officers and Employees***

Part III of ch. 112, F.S., contains the Code of Ethics for Public Officers and Employees. The code intends to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law.<sup>50</sup> Included in the code are provisions relating to doing business with one's agency,<sup>51</sup> conflicting employment or contractual relationships,<sup>52</sup> post-employment restrictions,<sup>53</sup> and requirements for ethics training for specified constitutional officers and elected municipal officers and commissioners.<sup>54</sup>

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

The bill provides for additional transparency and accountability of commercial service airports.

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<sup>46</sup> Section 287.017, F.S.

<sup>47</sup> Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

<sup>48</sup> See s. 287.057(3), F.S.

<sup>49</sup> Federal Aviation Administration, *Procurement and Contracting Under AIP*, available at: <https://www.faa.gov/airports/aip/procurement/> (last visited February 18, 2020).

<sup>50</sup> Florida Commission on Ethics, *Guide to the Sunshine Amendment and the Code of Ethics for Public Employees*. 2019, p.1., available at: <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=20191213> (last visited January 22, 2020).

<sup>51</sup> Section 112.313(3), F.S.

<sup>52</sup> Section 112.313(7), F.S.

<sup>53</sup> Section 112.313(9), F.S.

<sup>54</sup> Section 112.313(9), F.S.

**Section 1** amends s. 11.45(2)(m), F.S., requiring the Auditor General, at least once every 7 years, to conduct an operational and financial audit of each large-hub commercial service airport. The bill defines the term “large-hub commercial service airport” for purposes of paragraph (m) to mean a publicly owned airport that has at least one percent of the annual passenger boardings in the United States as reported by the FAA.

**Section 2** amends s. 112.3144(1)(c), F.S., requiring each member of the governing body of a large-hub commercial service airport to comply with the applicable financial disclosure requirements of Art. II, s. 8 of the State Constitution. For purposes of paragraph (c), the bill defines the term “large-hub commercial service airport” to mean a publicly owned airport that has at least 1 percent of the annual passenger boardings in the United States as reported by the FAA.

Based on the definitions in the bill, there are 19 commercial service airports in Florida, four of which are large-hub commercial service airports (Orlando, Miami, Fort Lauderdale, and Tampa International). The Auditor General would be required to conduct a financial and operational audit of these four airports at least once every 7 years.

Each member of the governing body of a large-hub commercial service airport would be required to comply with the full and public disclosure of their financial interests set out in Art. II, s. 8 of the State Constitution (Form 6). Because the Miami and Fort Lauderdale airports are operated by Miami-Dade and Broward counties, respectively, in which county commissioners are already subject to the constitutional financial disclosure requirements (Form 6), this provision only impacts the governing bodies of the Orlando and Tampa airports, which are governed as independent special districts.

**Section 3** creates s. 332.0075, F.S., entitled *Commercial service airports; transparency and accountability; penalty*, providing the following definitions for purposes of the new section:

- “Commercial service airport” means a primary airport, as defined in 49 U.S.C. s. 47102, that is classified as a large, medium, small – hub airport by the FAA.
- “Department” means the Department of Transportation.
- “Governing body” means the governing body of the municipality, county, or special district that operates a commercial service airport.

The bill requires the governing body of each commercial service airport to establish and maintain a website to post information relating to the operation of such airport, including:

- All published notices of meetings and published meeting agendas for the governing body.
- The official minutes of each meeting of the governing body, which must be posted within three business days after the date of the meeting in which the minutes are approved.
- The approved budget for the commercial service airport for the current fiscal year, which must be posted on the website, which must be posted within seven days after the date of adoption. Budgets must remain on the website for two years after the conclusion of the fiscal year in which they were adopted.
- All commercial service airport planning documents and all financial and statistical reports submitted to the FAA, which must be posted upon submission.
- The airport master plan for the commercial service airport on the FAA’s website.

- Any contract or contract amendment executed by or on behalf of the airport in excess of \$100,000, which must be posted on the website no later than 7 business days before the governing body votes to approve the contract or amendment.
- Position and rate information for each employee, including, at a minimum, the employee's position title, position description, and annual or hourly salary.

The bill provides that commercial service airports are subject to the requirements of ch. 287, F.S., relating to the procurement of personal property and services, notwithstanding any other law. Under the bill, commodity and service contracts in excess of \$100,000 must be executed following a competitive sealed bid process. However, the bill states that commercial service airports are allowed to enact or adopt criteria, standards, preferences, or policies to promote small and locally owned businesses in the competitive bid solicitations process, and also provides that commercial service airports can impose contractual provisions necessary to address local economic conditions or local regulatory requirements. Furthermore, the bill state that the requirements of ch. 287, F.S., may be avoided when certain exemptions apply.

All contracts executed by or on behalf of the commercial service airport in excess of \$325,000<sup>55</sup> must be approved, awarded, or ratified by the governing body of the airport as a separate line item on the agenda after providing a reasonable opportunity for public comment. The bill prohibits approving such contracts as part of a consent agenda.

The bill reiterates that members of the governing body and employees of a commercial service airport are subject to the Code of Ethics for Public Officers and Employees.<sup>56</sup>

Beginning January 1, 2021, each member of a governing body of a commercial service airport will be required to complete four hours of ethics training each calendar year, which addresses, at a minimum, Art. II, s. 8 of the State Constitution, relating to ethics in government; the Code of Ethics for Public Officers and Employees; and the public records and public meetings laws. This requirement may be satisfied by the completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the class covers the required subject material.<sup>57</sup> Airport governing body members that have completed this training for another public office are exempt from this requirement.

Beginning November 1, 2021, and each November 1 thereafter, the bill requires each commercial service airport to submit to the FDOT the following information:

- Its approved budget for the current fiscal year.
- Any financial reports submitted to the FAA during the previous calendar year.
- A link to the website for the commercial service airport.
- A statement that the commercial service airport has complied with part III of chapter 112, F.S., relating to the Code of Ethics for Public Officers and Employees; chapter 287, F.S., relating to procurement; and the statutory provisions created in the bill. This statement must be verified as provided in s. 92.525, F.S.

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<sup>55</sup> This is the CATEGORY FIVE purchasing threshold in s. 287.017, F.S.

<sup>56</sup> Part III of chapter 112, F.S.

<sup>57</sup> This requirement is identical to the ethics training required for constitutional officers, elected municipal officers, and commissioners of community redevelopment agencies contained in s. 112.3142(2), F.S.

The FDOT is required to review the submitted and website-posted information to determine the information's accuracy. Beginning January 15, 2022, and each January 15 thereafter, the FDOT is required to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report summarizing commercial service airport compliance with these provisions. The bill prohibits the FDOT from expending any funds allocated to a commercial service airport as contained in the FDOT's adopted work program unless pledged for debt service until the airport demonstrates its compliance.

**Section 4** provides that the bill takes effect on October 1, 2020.

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

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

Section 18(a), Article VII, of the Florida Constitution, provides that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless certain exemptions or exceptions are met. Article VII, section 18(d) of the Florida Constitution provides laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, *laws having insignificant fiscal impact*,<sup>58</sup> and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section. For Fiscal Year 2020-2021, an insignificant impact is forecast at slightly over \$2.1 million.<sup>59</sup>

The county/municipality mandate provision in Art. VII, s. 18 of the State Constitution may apply to the bill's requirements when the commercial service airport is a government department model (where the airport operates as a department of the local government) or possibly an airport authority model (for dependent special districts<sup>60</sup>). The insignificant impact exemption may apply if the cost of compliance with the bill's provisions does not exceed \$2.1 million in the aggregate.

The fiscal impact of the bill to local governments is indeterminate.

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

None.

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<sup>58</sup> 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 22, 2020).

<sup>59</sup> Based on the Florida Demographic Estimating Conference's December 3, 2019, population forecast for 2020 of 21,555,986. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited January 22, 2020).

<sup>60</sup> For example, a "dependent special district" can mean a special district in which the membership of its governing body is identical to that of the governing body of a single county. See s. 189.012(2), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has no apparent fiscal impact on state or local government revenues.

Local government entities operating commercial service airports may incur expenditures associated with compliance with the provisions of the bill; however, the amount of these expenditures would vary from airport to airport based on how the bill's requirements exceed current operational and administrative practices. The total fiscal impact on local government is therefore indeterminate.

The FDOT may not expend any funds allocated to a commercial service airport as contained in the FDOT's adopted work program unless pledged for debt service until the airport demonstrates its compliance. However, the fiscal impact of any non-compliance, and the effect of such non-compliance on the FDOT's adopted work program, is indeterminate.

The FDOT will incur administrative expenses and use of resources associated with the bill's provisions. According to the FDOT, to fully administer such a program, the FDOT would need to establish rules and procedures to establish the processes for submission and review of the required information, thresholds for compliance, and timelines to reasonably accomplish tasks without impairing project production schedules. Other funding needs include but are not limited to technology costs for data storage, electronic file exchange, and websites.<sup>61</sup> However, the agency analysis assigns no estimated dollar value for such costs. The fiscal impact of the FDOT appears to be indeterminate.

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<sup>61</sup> See the FDOT's analysis of similar HB 915 (2020) available at <http://abar.laspbs.state.fl.us/ABAR/ABAR.aspx> (last visited January 22, 2019).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 11.45 and 112.3144.

This bill creates the following sections of the Florida Statutes: 332.0075.

**IX. Additional Information:**

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

**CS by Community Affairs on February 17, 2020:**

The committee substitute makes the following changes to the bill:

- Requires the Auditor General to conduct operational audits once every 7 years, instead of every 5 years, and requires the audit to include, at a minimum, an assessment of compliance with s. 332.0075, ch. 287, F.S., and state public records and public meetings laws.
- Clarifies that persons already required to file a Form 6 financial disclosure are not required to file an additional disclosure for serving on governing body of a large-hub commercial service airport.
- Changes definition of “commercial service airport” to mean a primary airport as defined in 49 U.S.C. s. 47102, and uses FAA classifications for other smaller airports.
- Requires official minutes of governing body meetings to be posted online within 7 days, instead of 3.
- Requires commercial service airport websites to include a link to the airport master plan on the FAA website.
- Requires that purchases of commodities or contractual services that exceed \$100,000, instead of \$65,000 (CATEGORY THREE), need to be made using the competitive sealed bid process.
- Allows commercial service airports to enact or adopt criteria, standards, preferences, or policies to promote small and locally-owned businesses in the competitive bid solicitation process.
- Requires an airport governing board to approve, award, or ratify contracts that exceed \$325,000 (CATEGORY FIVE), instead of \$65,000 (CATEGORY THREE).
- Allows counties and municipalities to apply more stringent ethical standards to an airport governing body than provided in the bill.
- Clarifies that constitutional officers and elected officers who complete ethics training required for office are not obligated to complete such training for serving on an airport governing body.

- Changes the effective date of the bill from July 1, 2020, to October 1, 2020.

B. Amendments:

None.

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

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230136

LEGISLATIVE ACTION

Senate

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. .  
. .  
. .  
. .

House

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The Committee on Rules (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 64 - 70

and insert:

(c) Each member of the governing body of a large-hub commercial service airport, except for members required to comply with the financial disclosure requirements of s. 8, Art. II of the State Constitution, shall comply with the financial disclosure requirements of s. 112.3145(3). For purposes of this paragraph,



230136

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

13 And the title is amended as follows:

14       Delete lines 9 - 11

15 and insert:

16       financial disclosure requirements; defining the term

17       "large-hub commercial

By the Committee on Community Affairs; and Senators Diaz and Baxley

578-03803-20

20201258c1

1 A bill to be entitled  
 2 An act relating to commercial service airports;  
 3 amending s. 11.45, F.S.; directing the Auditor General  
 4 to conduct specified audits of certain airports;  
 5 defining the term "large-hub commercial service  
 6 airport"; amending s. 112.3144, F.S.; requiring  
 7 members of the governing body of a large-hub  
 8 commercial service airport to comply with certain  
 9 financial disclosure requirements; providing that a  
 10 separate filing is not required under specified  
 11 circumstances; defining the term "large-hub commercial  
 12 service airport"; creating s. 332.0075, F.S.;  
 13 providing definitions; requiring the governing body of  
 14 a municipality, county, or special district that  
 15 operates a commercial service airport to establish and  
 16 maintain a website; requiring the governing body to  
 17 post or provide links to certain information on the  
 18 website; requiring the posting of specified contracts;  
 19 providing for the redaction of confidential and exempt  
 20 information; requiring commercial service airports to  
 21 comply with certain contracting requirements;  
 22 providing exceptions; requiring the governing body to  
 23 approve, award, or ratify certain contracts; requiring  
 24 members of the governing body of a commercial service  
 25 airport to comply with certain ethics requirements and  
 26 complete annual ethics training; requiring governing  
 27 bodies of commercial service airports to submit  
 28 certain information annually to the Department of  
 29 Transportation; requiring the department to review

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

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30 such information and submit an annual report to the  
 31 Governor and the Legislature; prohibiting the  
 32 department's expenditure of certain funds unless  
 33 specified conditions are met; providing an effective  
 34 date.

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

37  
 38 Section 1. Paragraph (m) is added to subsection (2) of  
 39 section 11.45, Florida Statutes, to read:  
 40 11.45 Definitions; duties; authorities; reports; rules.—  
 41 (2) DUTIES.—The Auditor General shall:  
 42 (m) At least once every 7 years, conduct an operational and  
 43 financial audit of each large-hub commercial service airport.  
 44 Each operational audit shall include, at a minimum, an  
 45 assessment of compliance with s. 332.0075, including compliance  
 46 with chapter 287, and compliance with the public records and  
 47 public meetings laws of this state. For purposes of this  
 48 paragraph, the term "large-hub commercial service airport" means  
 49 a publicly owned airport that has at least 1 percent of the  
 50 annual passenger boardings in the United States as reported by  
 51 the Federal Aviation Administration.

52  
 53 The Auditor General shall perform his or her duties  
 54 independently but under the general policies established by the  
 55 Legislative Auditing Committee. This subsection does not limit  
 56 the Auditor General's discretionary authority to conduct other  
 57 audits or engagements of governmental entities as authorized in  
 58 subsection (3).

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59 Section 2. Paragraph (c) is added to subsection (1) of  
60 section 112.3144, Florida Statutes, to read:

61 112.3144 Full and public disclosure of financial  
62 interests.-

63 (1)

64 (c) Each member of the governing body of a large-hub  
65 commercial service airport shall comply with the applicable  
66 financial disclosure requirements of s. 8, Art. II of the State  
67 Constitution. Any person otherwise required under this  
68 subsection to file a full and public financial disclosure, is  
69 not required to separately file a full and public financial  
70 disclosure under this paragraph. For purposes of this paragraph,  
71 the term "large-hub commercial service airport" means a publicly  
72 owned airport that has at least 1 percent of the annual  
73 passenger boardings in the United States as reported by the  
74 Federal Aviation Administration.

75 Section 3. Section 332.0075, Florida Statutes, is created  
76 to read:

77 332.0075 Commercial service airports; transparency and  
78 accountability; penalty.-

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

80 (a) "Commercial service airport" means a primary airport,  
81 as defined in 49 U.S.C. s. 47102, that is classified as a large-  
82 , medium-, or small-hub airport by the Federal Aviation  
83 Administration.

84 (b) "Department" means the Department of Transportation.

85 (c) "Governing body" means the governing body of the  
86 county, municipality, or special district that operates a  
87 commercial service airport.

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88 (2) Each governing body shall establish and maintain a  
89 website to post information relating to the operation of a  
90 commercial service airport, including:

91 (a) All published notices of meetings and published meeting  
92 agendas of the governing body.

93 (b) The official minutes of each meeting of the governing  
94 body, which shall be posted within 7 business days after the  
95 date of the meeting in which the minutes were approved.

96 (c) The approved budget for the commercial service airport  
97 for the current fiscal year, which shall be posted within 7  
98 business days after the date of adoption. Budgets must remain on  
99 the website for 2 years after the conclusion of the fiscal year  
100 for which they were adopted.

101 (d) A link to the airport master plan for the commercial  
102 service airport on the Federal Aviation Administration's  
103 website.

104 (e) A link to all financial and statistical reports for the  
105 commercial service airport on the Federal Aviation  
106 Administration's website.

107 (f) Any contract or contract amendment executed by or on  
108 behalf of the commercial service airport in excess of \$100,000,  
109 shall be posted no later than 7 business days after the  
110 commercial service airport executes the contract or contract  
111 amendment. However, a contract or contract amendment may not  
112 reveal information made confidential or exempt by law. Each  
113 commercial service airport must redact confidential or exempt  
114 information from each contract or contract amendment before  
115 posting a copy on its website.

116 (g) Position and rate information for each employee of the

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117 commercial service airport, including, at a minimum, the  
 118 employee's position title, position description, and annual or  
 119 hourly salary.

120 (3) (a) Notwithstanding any other provision of law to the  
 121 contrary, commercial service airports are subject to the  
 122 requirements of chapter 287 for purchases of commodities or  
 123 contractual services that exceed \$100,000. If the purchase of  
 124 commodities or contractual services exceeds \$100,000, the  
 125 purchase of commodities or contractual services may not be made  
 126 without receiving competitive sealed bids, competitive sealed  
 127 proposals, or competitive sealed replies unless an exception  
 128 applies as provided in s. 287.057(3) or an immediate danger to  
 129 the public health, safety, or welfare, or other substantial loss  
 130 to the commercial service airport requires emergency action. In  
 131 making purchases or conducting a competitive solicitation  
 132 pursuant to this section, a commercial service airport is  
 133 authorized to enact or adopt criteria, standards, preferences,  
 134 or policies for the promotion of small or locally owned  
 135 businesses, or otherwise apply such criteria, standards,  
 136 preferences, or policies otherwise generally applicable to  
 137 competitive solicitations of the political subdivision owning  
 138 and operating such commercial service airport, and may impose  
 139 contract provisions necessary to address local economic  
 140 conditions or local regulatory requirements.

141 (b) A governing body must approve, award, or ratify all  
 142 contracts executed by or on behalf of a commercial service  
 143 airport in excess of the threshold amount provided in s. 287.017  
 144 for CATEGORY FIVE as a separate line item on the agenda and must  
 145 provide a reasonable opportunity for public comment. Such

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146 contracts may not be approved, awarded, or ratified as part of a  
 147 consent agenda.

148 (4) (a) Members of a governing body and employees of a  
 149 commercial service airport are subject to part III of chapter  
 150 112. However, this paragraph does not prohibit the application  
 151 of more stringent ethical standards adopted by county or  
 152 municipal charter, ordinance, or resolution of the governing  
 153 body for its members and employees.

154 (b) Beginning January 1, 2021, each member of a governing  
 155 body must complete 4 hours of ethics training each calendar year  
 156 which addresses, at a minimum, s. 8, Art. II of the State  
 157 Constitution, the Code of Ethics for Public Officers and  
 158 Employees, and the public records and public meetings laws of  
 159 this state. This requirement may be satisfied by completion of a  
 160 continuing legal education class or other continuing  
 161 professional education class, seminar, or presentation if the  
 162 required subject material is covered therein. Constitutional  
 163 officers and elected municipal officers who are members of the  
 164 governing body who complete the ethics training required in s.  
 165 112.3142 shall be considered in compliance with this paragraph.

166 (5) (a) Beginning November 1, 2021, and each November 1  
 167 thereafter, the governing body of each commercial service  
 168 airport shall submit the following information to the  
 169 department:

- 170 1. Its approved budget for the current fiscal year.
- 171 2. Any financial reports submitted to the Federal Aviation
- 172 Administration during the previous calendar year.
- 173 3. A link to its website.
- 174 4. A statement, verified as provided in s. 92.525, that it

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175 has complied with part III of chapter 112, chapter 287, and this  
176 section.

177 (b) The department shall review the information submitted  
178 by the commercial service airport and posted on the airport's  
179 website to determine the accuracy of such information. Beginning  
180 January 15, 2022, and each January 15 thereafter, the department  
181 shall submit to the Governor, the President of the Senate, and  
182 the Speaker of the House of Representatives a report summarizing  
183 commercial service airport compliance with this section.

184 (6) The department may not expend any funds allocated to a  
185 commercial service airport as contained in the adopted work  
186 program, unless pledged for debt service, until the commercial  
187 service airport demonstrates its compliance with this section.

188 Section 4. This act shall take effect October 1, 2020.

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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**BILL:** CS/SB 966

**INTRODUCER:** Governmental Oversight and Accountability Committee and Senator Gainer

**SUBJECT:** Public Records/Disaster Recovery Assistance

**DATE:** February 24, 2020      **REVISED:** \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<b>Favorable</b>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>
3.	<u>Proctor</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 966 makes confidential and exempt from public disclosure requirements property photographs and applicant financial documentation provided to the Department of Economic Opportunity (DEO); the Florida Housing Finance Corporation (FHFC), a county; a municipality; or a local housing finance agency by or on behalf of an applicant for or a participant in a federal, state, or local housing assistance programs for the purposes of disaster recovery assistance for a presidentially declared disaster.

The bill provides for the disclosure of such confidential and exempt information to a governmental entity or its agents for specified purposes.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2025, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

The bill may have a minimal negative fiscal impact on the governmental sector.

The bill has an effective date of July 1, 2020.

## II. Present Situation:

### Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

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

### Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>5</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

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

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

<sup>3</sup> 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)

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

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

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>10</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup>

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

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.<sup>14</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

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

The Open Government Sunset Review Act<sup>16</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> 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.<sup>19</sup>

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

<sup>8</sup> Section 119.07(1)(a), F.S.

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

<sup>11</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>12</sup> *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>13</sup> *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>14</sup> *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

<sup>15</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

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

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

<sup>18</sup> Section 119.15(2)(a) and (b), F.S., 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.

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

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

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;<sup>21</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>22</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

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

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

### **Department of Economic Opportunity**

The DEO was created to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians.<sup>27</sup> The head of the DEO is the executive director, who is appointed by the Governor, subject to confirmation by the Senate. The executive director serves at the pleasure of and reports to the Governor.<sup>28</sup> The executive director manages all activities and responsibilities of the DEO, and serves as the manager for the state with respect to contracts with Enterprise Florida Inc., and

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

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

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

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

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

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

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

<sup>27</sup> Section 20.60(4), F.S.

<sup>28</sup> Section 20.60(2), F.S.

all applicable direct-support organizations.<sup>29</sup> Within the DEO, the Office of Disaster Recovery “supports communities following disasters by addressing long-term recovery needs for housing, infrastructure and economic development.”<sup>30</sup>

### **Florida Housing Corporation**

The Florida Housing Finance Corporation Act provides that the FHFC is created within the Department of Economic Opportunity and is a public corporation.<sup>31</sup> The FHFC is responsible for increasing the amount of affordable housing available to individuals and families by stimulating investment of private capital and encouraging public and private sector housing partnerships. To accomplish this, the FHFC uses federal and state resources to finance the development of safe, affordable homes and rental housing and to assist first-time homebuyers.<sup>32</sup>

### **Disaster Recovery Housing Assistance Programs**

The DEO, FHFC, counties, municipalities, and local housing finance agencies have various housing programs that are designed to assist those who have been impacted by a disaster. One such program, the Community Development Block Grant - Disaster Recovery Program (CDBG-DR) is funded by the U.S. Department of Housing and Urban Development (HUD) and supports communities following disasters by addressing long-term recovery needs. In response to a presidentially declared disaster, Congress may appropriate additional funding for the CDBG-DR Program as “grants to rebuild the affected areas and provide crucial seed money to start the recovery process.”<sup>33</sup>

Rebuild Florida is program funded through HUD and the CDBG-DR Program which focuses on long-term recovery after all other assistance has been exhausted, including private insurance and other forms of federal assistance.<sup>34</sup> DEO administers the Rebuild Program which was approved by the HUD after the 2017 hurricane season. In 2017, following Hurricane Irma, HUD allocated a total of \$616 million in funding to support long-term recovery efforts via the CDBG-DR Program.<sup>35</sup>

CDBG-DR funds are typically used for recovery efforts involving housing, economic development, infrastructure repair, and prevention of further damage to affected areas.<sup>36</sup> Eligible activities include, but are not limited to, the following:

- Purchasing damaged properties in a flood plain and relocating residents to safer areas;

<sup>29</sup> Section 20.60(9), F.S.

<sup>30</sup> Department of Economic Opportunity, *Office of Disaster Recovery*, <http://www.floridajobs.org/community-planning-anddevelopment/assistance-for-governments-and-organizations/disaster-recovery-initiative> (last visited Feb. 4, 2020).

<sup>31</sup> Section 420.504(1), F.S.

<sup>32</sup> See ss. 420.502 and 420.507, F.S.

<sup>33</sup> U.S. Department of Housing and Urban Development, *Community Development Block Grant Disaster Recovery Program*, <https://www.hudexchange.info/programs/cdbg-dr/> (last visited Feb. 4, 2020).

<sup>34</sup> Department of Economic Opportunity, *Rebuild Florida Housing Repair and Replacement Program Frequently Asked Questions*, <http://floridajobs.org/rebuildflorida/faqs> (last visited February 4, 2019).

<sup>35</sup> Department of Economic Opportunity, *Office of Disaster Recovery Policy Manual*, [http://www.floridajobs.org/docs/default-source/office-of-disaster-recovery/office-of-disaster-recovery-main-page/odr-comprehensive-policies-and-procedures-11-21-19.pdf?sfvrsn=24e441b0\\_8](http://www.floridajobs.org/docs/default-source/office-of-disaster-recovery/office-of-disaster-recovery-main-page/odr-comprehensive-policies-and-procedures-11-21-19.pdf?sfvrsn=24e441b0_8) (last visited January 31, 2020).

<sup>36</sup> *Id.*

- Providing Relocation payments for people and businesses displaced by the disaster;
- Removing debris not covered by the Federal Emergency Management Agency;
- Rehabilitating homes and buildings damaged by the disaster; and
- Providing homeownership activities such as down payment assistance, interest rate subsidies and loan guarantees for disaster victims.<sup>37</sup>

Applicants seeking assistance from DEO's CDBG-DR programs are required to provide personal information and supporting documentation. For example, damage assessment data collected during property inspections to determine remaining needed repairs may include the applicant's name, address, telephone numbers, photo identification, and interior and exterior photographs of their residence.<sup>38</sup> Other commonly needed personal identifying information includes, proof of home ownership, tax returns, and salary or wage statements. DEO maintains all files containing such personally identifiable information in a secure manner.<sup>39</sup>

### **The Robert T. Stafford Disaster Relief Act and a Presidential Disaster Declaration**

Congress enacted the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act")<sup>40</sup> "to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from disasters."<sup>41</sup> The Stafford Act is triggered when the State Governor determines that State and local resources are insufficient to respond to a disaster, asks the President to declare an area a "major disaster," and the President does so.<sup>42</sup> The President's declaration designates the areas within a State where Federal assistance may be made available and what specific types of Federal assistance are authorized.

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

**Section 1** amends s. 119.071, F.S., to make confidential and exempt from public disclosure property photographs and applicant financial documentation provided to the DEO, FHFC, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster.

The bill does not specify which federal, state, or local housing assistance programs to which the records and an information may pertain.

The bill provides that DEO, FHFC, a county, a municipality or a local finance agency may release the records made confidential and exempt to a governmental entity or its agents for the purpose of auditing federal, state, or local housing programs or housing assistance programs. The entities receiving such confidential information must maintain the confidential and exempt status

<sup>37</sup> *Id.*

<sup>38</sup> Department of Economic Opportunity, *Senate Bill 966 Analysis* (December 2, 2020)(on file with the Senate Committee on Governmental Oversight and Accountability).

<sup>39</sup> *See Supra* note 27 at 117.

<sup>40</sup> 42 U.S.C. §§ 5121 *et seq.*

<sup>41</sup> 42 U.S.C. §§ 5121(b).

<sup>42</sup> *Id.* at § 5171.

of such records. Such confidential and exempt records may be used in any administrative or judicial proceeding, provided such records are kept confidential and exempt unless otherwise ordered by a court.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2025, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

The bill contains a statement of public necessity, which includes:

- The Legislature finds that it is a public necessity that property photographs and applicant financial documentation provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24 (a), Article I of the State Constitution; and
- In response to a disaster, in an effort to determine storm damage and ascertain the estimated cost of rehabilitation, an agency may conduct a property inspection to observe and record the presence of damage. The damage assessment data collected may include interior and exterior photographs of such individual's residence. This information may be used to locate the damaged property and identify and contact the property owner or tenant. If released, this information may be used by fraudulent contractors, predatory lenders, thieves, or individuals seeking to impose on the vulnerability of a distressed property owner or tenant following a disaster. Therefore, it is necessary that this information be protected to ensure that people impacted by a disaster do not have sensitive information released.

The bill has an effective date of July 1, 2020.

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

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

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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

###### ***Vote Requirement***

Article I, s. 24(c) of the 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 property photographs and applicant financial documentation provided to the DEO, FHFC, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for or

participation in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster. 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 property photographs and applicant financial documentation provided to the DEO, FHFC, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for or a participant in a federal, state or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster. This bill exempts only property photographs and applicant financial documentation and provides for their release to a governmental entity or its agents for the purpose of auditing federal, state, or local housing programs or housing assistance programs. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will be subject to the cost, to the extent one is imposed, associated with an agency making redactions in response to a public records requests.

C. **Government Sector Impact:**

Government agencies will incur costs related to the redaction of records in responding to public records requests.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 119.071.

IX. **Additional Information:**

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

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

**CS by Governmental Oversight and Accountability on February 10, 2020:**

The committee substitute defines the term “financial documentation” and narrows the exemption by making only property photographs and applicant financial documentation confidential and exempt. Specifies that the exemption relates only to disaster recovery assistance for a presidentially declared disaster. Additionally, it makes technical changes to the provisions providing for disclosure of the confidential and exempt information in certain circumstances.

B. **Amendments:**

None.

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

585-03396-20

2020966c1

1 A bill to be entitled  
2 An act relating to public records; amending s.  
3 119.071, F.S.; defining the term "financial  
4 documentation"; providing an exemption from public  
5 records requirements for property photographs and  
6 financial documentation provided to the Department of  
7 Economic Opportunity, the Florida Housing Finance  
8 Corporation, a county, a municipality, or a local  
9 housing finance agency by or on behalf of an applicant  
10 for or a participant in a federal, state, or local  
11 housing assistance program for the purpose of disaster  
12 recovery assistance; authorizing access to such  
13 records and information for certain purposes;  
14 providing for future legislative review and repeal of  
15 the exemption; providing a statement of public  
16 necessity; providing an effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20 Section 1. Paragraph (1) is added to subsection (5) of  
21 section 119.071, Florida Statutes, to read:  
22 119.071 General exemptions from inspection or copying of  
23 public records.—

24 (5) OTHER PERSONAL INFORMATION.—

25 (1)1. For purposes of this paragraph, the term "financial  
26 documentation" means income statements, paystubs, bank  
27 statements, tax returns, public assistance information, disaster  
28 recovery benefits, social security disability benefits, and  
29 insurance information.

Page 1 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

585-03396-20

2020966c1

30 2. Property photographs and applicant financial  
31 documentation provided to the Department of Economic  
32 Opportunity, the Florida Housing Finance Corporation, a county,  
33 a municipality, or a local housing finance agency by or on  
34 behalf of an applicant for or a participant in a federal, state,  
35 or local housing assistance program for the purpose of disaster  
36 recovery assistance for a presidentially declared disaster are  
37 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
38 of the State Constitution.

39 3. An agency provided such confidential and exempt records  
40 pursuant to subparagraph 2. may disclose such confidential and  
41 exempt records to a governmental entity or its agents for the  
42 purpose of auditing federal, state, or local housing programs or  
43 housing assistance programs. The entities or agents receiving  
44 such confidential information must maintain the confidential and  
45 exempt status of such records. Such confidential and exempt  
46 records may be used in any administrative or judicial  
47 proceeding, provided such records are kept confidential and  
48 exempt unless otherwise ordered by a court.

49 4. This paragraph is subject to the Open Government Sunset  
50 Review Act in accordance with s. 119.15 and shall stand repealed  
51 on October 2, 2025, unless reviewed and saved from repeal  
52 through reenactment by the Legislature.

53 Section 2. The Legislature finds that it is a public  
54 necessity that property photographs and applicant financial  
55 documentation provided to the Department of Economic  
56 Opportunity, the Florida Housing Finance Corporation, a county,  
57 a municipality, or a local housing finance agency by or on  
58 behalf of an applicant for or a participant in a federal, state,

Page 2 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

585-03396-20

2020966c1

59 or local housing assistance program for the purpose of disaster  
60 recovery assistance for a presidentially declared disaster be  
61 made confidential and exempt from s. 119.07(1), Florida  
62 Statutes, and s. 24 (a), Article I of the State Constitution. In  
63 response to a disaster an agency, in an effort to determine  
64 storm damage and ascertain the estimated cost of rehabilitation,  
65 may conduct a property inspection to observe and record the  
66 presence of damage. The damage assessment data collected may  
67 include interior and exterior photographs of such individual's  
68 residence. This information may be used to locate the damaged  
69 property and identify and contact the property owner or tenant.  
70 If released, this information may be used by fraudulent  
71 contractors, predatory lenders, thieves, or individuals seeking  
72 to impose on the vulnerability of a distressed property owner or  
73 tenant following a disaster. Therefore, it is necessary that  
74 this information be protected to ensure that people impacted by  
75 a disaster do not have sensitive information released.

76 Section 3. This act shall take effect July 1, 2020.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Finance and Tax, *Chair*  
Agriculture, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Military and Veterans Affairs and Space

**SENATOR GEORGE B. GAINER**

2nd District

February 10, 2020

Re: SB 966

Dear Chair Benacquisto,

I am respectfully requesting Senate Bill 966, related to Public Records/Disaster Recovery Assistance, be placed on the agenda for the next meeting of the Committee on Rules.

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,

A handwritten signature in cursive script that reads "George B. Gainer".

Senator George Gainer

District 2

Cc. John Phelps, Cynthia Futch, Joshua Goergen, Timothy Morris

REPLY TO:

- 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
- 302 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002
- Northwest Florida State College, 100 East College Boulevard, Building 330, Rooms 105 and 112, Niceville,

Florida 32578 (850) 747-5454

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.26.2020

Meeting Date

SB 966

Bill Number (if applicable)

Topic Public Records/Disaster Recovery Assistance

Amendment Barcode (if applicable)

Name Tonnelle [tone-Net] Graham

Job Title Assoc. Director of Public Policy

Address 100 S. Monroe St.

Phone 850.922.4300

Street

Tallahassee FL 32301

Email tgraham@fl-counties.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

(The Chair will read this information into the record.)

Representing FL Association of Counties

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: CS/SB 1018

INTRODUCER: Criminal Justice Committee and Senator Stewart

SUBJECT: Exposure of Sexual Organs

DATE: February 24, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	<b>Fav/CS</b>
2.	Elsesser	Cibula	JU	<b>Favorable</b>
3.	Stokes	Phelps	RC	<b>Favorable</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1018 amends s. 800.03, F.S., increasing the penalty from a first degree misdemeanor to a third degree felony for a second or subsequent offense of exposing or exhibiting one's sexual organs in a vulgar or indecent manner while in public or on or in view of the private premises of another.

Additionally, this bill provides that exposing of sexual organs by a person who is merely naked at a place provided or set apart for that purpose, including but not limited to a clothing-optional beach, or an inmate in a state correctional institution or local detention facility, is not a violation of s. 800.03, F.S.

This bill amends s. 901.15, F.S., adding the crime of exposure of sexual organs to the list of misdemeanor offenses for which an officer may conduct a warrantless arrest.

The Criminal Justice Impact Conference estimates this bill will have a "positive indeterminate" prison bed impact (unquantifiable increase in prison bed impact). See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2020.

## II. Present Situation:

### Exposure of sexual organs

At common law, indecent exposure was a public nuisance and punishable as a misdemeanor.<sup>1</sup> “Section 800.03, Florida Statutes [...] represents Florida’s effort at supplanting the common law offense.”<sup>2</sup>

Section 800.03, F.S., provides that it is unlawful for a person to expose or exhibit his or her sexual organs in a vulgar or indecent manner while in public or private view, or to be naked except in any place provided or set apart for that purpose. A mother who is breastfeeding does not violate this section “under any circumstances.” A violation of this section is a misdemeanor of the first degree.<sup>3</sup>

Courts have consistently held that being naked alone is not sufficient to violate s. 800.03, F.S. To trigger a violation, there must also be a “lascivious” exhibition of the sexual organs.<sup>4</sup> The terms “lascivious,” “lewd,” and “indecent” have been interpreted by the Florida Supreme Court to be synonymous and mean wicked, lustful, unchaste, licentious, or sensual design by the perpetrator.<sup>5</sup> To violate s. 800.03, F.S., actions must involve “an unlawful indulgence in lust, eager for sexual indulgence.”<sup>6</sup> Because nudity alone is not a violation of s. 800.03, F.S., some counties have enacted county ordinances which specifically address public nudity.<sup>7</sup> Similarly, the Department of Environmental Protection has enacted a rule that specifically prohibits nudity in parks.<sup>8</sup> These local ordinances or rules further restrict nudity in their respective jurisdictions.

Courts have also made a distinction between conduct that occurs in public and conduct that occurs in a private place. If the exposure occurs in a private place, evidence must be provided that someone was offended by the conduct.<sup>9</sup>

Similar conduct, when done in the presence of a person younger than 16, is currently a felony. Section 800.04(7), F.S., provides that a person who intentionally masturbates, intentionally exposes his or her genitals in a lewd or lascivious manner, or intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, and the victim is younger than 16 years old, commits:

- A second degree felony,<sup>10</sup> if the person is 18 years of age or older.

---

<sup>1</sup> 3 Wharton's Criminal Law s 317 (Torcia, C., 14th ed. 1980).

<sup>2</sup> *Duvallon v. State*, 404 So. 2d 196, 196-97 (Fla. 1st DCA 1981).

<sup>3</sup> 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.

<sup>4</sup> See *Hoffman v. Carson*, 250 So. 2d 891 (Fla. 1971); *Goodmakers v. State*, 450 So. 2d 888 (Fla. 2d DCA, 1984); *Duvallon v. State*, 404 So. 2d 196 (Fla. 1st DCA, 1981).

<sup>5</sup> *Boles v. State*, 27 So. 2d 293, 294 (Fla. 1946); *Goodmakers v. State*, 450 So. 2d 888 (Fla. 2d DCA 1984).

<sup>6</sup> *Duvallon*, 404 So. 2d at 197 (quoting *Chesebrough v. State*, 255 So.2d 675, at 677, 678 (Fla.1971)).

<sup>7</sup> Brevard County, Florida, Municipal Code art. II., s. 74-30.

<sup>8</sup> Rule 62D-2.014(7)(a), F.A.C., states that in every area of a park including bathing areas no individual shall expose the human, male or female genitals, pubic area, the entire buttocks or female breast below the top of the nipple, with less than fully opaque covering.

<sup>9</sup> *State v. Kees*, 919 So. 2d 504, 506-07 (Fla. 5th DCA 2005).

<sup>10</sup> A second degree felony is punishable by up to 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

- A third degree felony,<sup>11</sup> if the person is younger than 18 years of age.

### **Arrest without an Arrest Warrant**

Section 901.15, F.S., provides the circumstances in which a law enforcement officer may conduct a warrantless arrest. Generally, a law enforcement officer may arrest a person without an arrest warrant when:

- The person has committed a felony or misdemeanor or violated a local ordinance in the officer's presence; however, the arrest for a misdemeanor or local ordinance must be made immediately or in fresh pursuit;
- A felony has been committed and the officer reasonably believes the person committed it;
- The officer reasonably believes that a felony has been or is being committed and that the person has committed or is committing it; and
- A warrant for the arrest has been issued and is held by another officer for execution.<sup>12</sup>

However, there are many exceptions to these general rules. A law enforcement officer may make an arrest, where there is probable cause<sup>13</sup> to believe that a person has committed one of the following offenses:

- Violations of injunctions for protection against domestic violence, dating violence, sexual violence, repeat violence, exploitation of a vulnerable adult or a foreign protection order;<sup>14</sup>
- Acts of domestic violence or dating violence;<sup>15</sup>
- Child abuse or luring or enticing a child for unlawful purposes;<sup>16</sup>
- Battery;<sup>17</sup>
- Criminal mischief or graffiti-related offenses;<sup>18</sup>
- Violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone;<sup>19</sup>
- Racing violation as described in s. 316.191(2), F.S.;<sup>20</sup>
- An act that violates a condition of pretrial release when the original arrest was for an act of domestic violence or dating violence;<sup>21</sup>
- Trespass in a posted secure area of an airport;<sup>22</sup>

<sup>11</sup> A third degree felony is punishable by up to five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

<sup>12</sup> Section 901.15(1), (2), (3), and (4), F.S. Also, a law enforcement officer who witnesses a violation of ch. 316, F.S. (State Uniform Traffic Control), may relay that information to another officer who can then make the arrest when reasonable and proper identification of the vehicle and the violation has been communicated to the arresting officer. Section 901.15(5), F.S.

<sup>13</sup> Probable cause to arrest is not to be equated with the standards of conclusiveness and probability required upon which a conviction must be based. *State v. Outten*, 206 So. 2d 392 (Fla.1968); Arrests are made upon probable cause or a reasonable ground for belief, not proof beyond a reasonable doubt. *Hall v. State*, 219 So. 2d 757 (Fla. 3d DCA 1969).

<sup>14</sup> Section 901.15(6), F.S.

<sup>15</sup> Section 901.15(7), F.S.

<sup>16</sup> Section 901.15(8), F.S.

<sup>17</sup> Section 901.15(9), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Section 901.15(13), F.S.

<sup>22</sup> Section 901.15(14), F.S.

- Assault upon a law enforcement officer, a firefighter, an emergency medical care provider, public transit employees or agents, or other officers specified in s. 784.07, F.S., who is engaged in the lawful performance of his or her duties;<sup>23</sup>
- Assault or battery upon an employee of a receiving facility as defined in s. 394.455(39), F.S., who is engaged in the lawful performance of his or her duties;<sup>24</sup> and
- A criminal act of cyberharassment as described in s. 784.049, F.S.<sup>25</sup>

### III. Effect of Proposed Changes:

This bill amends s. 800.03, F.S., increasing the penalty from a first degree misdemeanor to a third degree felony for a second or subsequent offense of exposing or exhibiting one's sexual organs in a vulgar or indecent manner while in public or on or in view of the private premises of another.

This bill removes the current statutory language, "or to be naked in public except in any place provided or set apart for that purpose." The removal of this language is consistent with the Florida Supreme Court's interpretation of the statute that mere nudity is not a violation of s. 800.03, F.S.<sup>26</sup>

Additionally, this bill provides that exposing of sexual organs by a person who is merely naked at a place provided or set apart for that purpose, including but not limited to a clothing-optional beach, or an inmate in a state correctional institution or local detention facility, is not a violation of s. 800.03, F.S.

This bill amends s. 901.15, F.S., adding the crime of exposure of sexual organs to the list of misdemeanor offenses for which an officer may conduct a warrantless arrest.

This bill is effective October 1, 2020

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

---

<sup>23</sup> Section 901.15(15), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Section 901.15(16), F.S.

<sup>26</sup> *Hoffman v. Carson*, 250 So. 2d 891 (Fla. 1971).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates this bill will have a “positive indeterminate” prison bed impact (unquantifiable increase in prison bed impact).<sup>27</sup>

The CJIC provides the following information relevant to its estimate:<sup>28</sup>

Per [Florida Department of Law Enforcement], in FY 18-19, 720 people were arrested under s. 800.03, F.S., with 283 guilty/convicted and 76 having adjudication withheld. It is not known how many of these people were exhibiting sexual organs in a vulgar or indecent manner, nor is it known how many were naked in public.

In FY 17-18, the incarceration rate for a Level 1, 3rd degree felony was 8.7%.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

---

<sup>27</sup> CJIC SB 1018-Exposure of Sexual Organs (Identical HB 675), January 27, 2020, on file with the Senate Committee on Criminal Justice.

<sup>28</sup> *Id.*

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 800.03 and 901.15.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on February 4, 2020:**

The committee substitute:

- Makes a second or subsequent violation of s. 800.03, F.S., a third degree felony.
- This bill removes the language, “or to be naked in public except in any place provided or set apart for that purpose.” The removal of this language is consistent with the Florida Supreme Court’s interpretation of the statute that mere nudity is not a violation of s. 800.03, F.S.<sup>29</sup>
- Provides that exposing of sexual organs by a mother breastfeeding her baby, a person who is merely naked at a place provided or set apart for that purpose, including but not limited to a clothing-optional beach, or an inmate in a state correctional institution or local detention facility, is not a violation of s. 800.03, F.S.
- Amends s. 901.15, F.S., to add the crime of exposure of sexual organs, contrary to s. 800.03, F.S., the list of misdemeanor offenses for which an officer may conduct a warrantless arrest.

- 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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<sup>29</sup> *Hoffman v. Carson*, 250 So. 2d 891 (Fla. 1971).

By the Committee on Criminal Justice; and Senator Stewart

591-03076-20

20201018c1

1 A bill to be entitled  
 2 An act relating to exposure of sexual organs; amending  
 3 s. 800.03; increasing criminal penalties for exposure  
 4 of sexual organs for a second or subsequent offense;  
 5 providing exceptions; amending s. 901.15, F.S.;  
 6 authorizing warrantless arrests when a law enforcement  
 7 officer has probable cause to believe that a person  
 8 has violated s. 800.03, F.S.; providing an effective  
 9 date.

10 Be It Enacted by the Legislature of the State of Florida:

11 Section 1. Section 800.03, Florida Statutes, is amended to  
 12 read:

13 800.03 Exposure of sexual organs.—  
 14 (1) It is unlawful to expose or exhibit one's sexual organs  
 15 in public or on the private premises of another, or so near  
 16 thereto as to be seen from such private premises, in a vulgar or  
 17 indecent manner, ~~or to be naked in public except in any place~~  
 18 ~~provided or set apart for that purpose.~~  
 19 (2) (a) Except as provided in paragraph (b), a violation of  
 20 this section is a misdemeanor of the first degree, punishable as  
 21 provided in s. 775.082 or s. 775.083.  
 22 (b) A second or subsequent violation of this section is a  
 23 felony of the third degree, punishable as provided in s.  
 24 775.082, s. 775.083, or s. 775.084.  
 25 (3) The exposure of sexual organs by any of the following  
 26 does not violate subsection (1):  
 27 (a) A mother's breastfeeding of her baby;

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-03076-20

20201018c1

30 (b) An individual who is merely naked at any place provided  
 31 or set apart for that purpose, including, but not limited to, a  
 32 clothing-optional beach; or  
 33 (c) An inmate incarcerated at a state correctional  
 34 institution or local detention facility does not under any  
 35 circumstance violate this section.

36 Section 2. Subsection (9) of section 901.15, Florida  
 37 Statutes, is amended to read  
 38 901.15 When arrest by officer without warrant is lawful.—A  
 39 law enforcement officer may arrest a person without a warrant  
 40 when:  
 41 (9) There is probable cause to believe that the person has  
 42 committed:  
 43 (a) Any battery upon another person, as defined in s.  
 44 784.03.  
 45 (b) An act of criminal mischief or a graffiti-related  
 46 offense as described in s. 806.13.  
 47 (c) A violation of a safety zone, security zone, regulated  
 48 navigation area, or naval vessel protection zone as described in  
 49 s. 327.461.  
 50 (d) A racing violation as described in s. 316.191(2).  
 51 (e) An exposure of sexual organs in violation of s. 800.03.  
 52 Section 3. This act shall take effect October 1, 2020.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 19, 2020

---

I respectfully request that **Senate Bill #: 1018** relating to Exposure of Sexual Organs be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Linda Stewart".

---

Senator Linda Stewart  
Florida Senate, District 13

c.c. John Phelps, Staff Director  
Cynthia Futch, Committee Administrative Assistant

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/26/20  
Meeting Date

1018  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name MAT BUTLER

Job Title LEUTENANT

Address 2500 W. COLONIAL DR.

Phone 407-254-7000

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32804

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Email MAT.BUTLER@ORL  
NO

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing ORANGE COUNTY SHERIFF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

28 Feb 2020  
Meeting Date

1018  
Bill Number (if applicable)

Topic Exposure of Sexual Organs

Amendment Barcode (if applicable)

Name Melina Rayna Svanhild Farley Barratt

Job Title Legislative Director

Address 8689 SE 69 Ter  
Street

Phone 352-226-7477

Trenton FL 32693  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FL NOW

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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**BILL:** CS/CS/SB 1508

**INTRODUCER:** Infrastructure and Security Committee; Criminal Justice Committee; and Senator Taddeo

**SUBJECT:** Police Vehicles

**DATE:** February 24, 2020      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wagoner</u>	<u>Jones</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<b>Fav/CS</b>
3.	<u>Wagoner</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1508 prohibits a person from knowingly selling, exchanging, or transferring a police vehicle without, before consummating the sale, exchange, or transfer, removing any police markings from the vehicle. The CS requires law enforcement agencies, before consummating the sale, exchange, or transfer, to provide an official letter of notification that police markings have been removed to the purchaser, customer, or transferee. The CS exempts the sales, exchanges, or transfers of police vehicles between law enforcements agencies. A person who knowingly sells, exchanges, or offers to sell or exchange a motor vehicle in violation of these provisions commits a second degree misdemeanor, which is punishable by up to 60 days in county jail and a fine of up to \$500.

The CS defines “police markings” as decals, stickers, distinctive paint schemes, or other markings attached or applied to a police vehicle that identify the vehicle as a police vehicle.

The CS may have a fiscal impact. See Section V. Fiscal Impact Statement.

The CS is effective July 1, 2020.

## II. Present Situation:

Once police vehicles reach a certain age or mile limit, many law enforcement agencies find it more cost effective to purchase new vehicles than continue to utilize older vehicles.<sup>1</sup> Law enforcement agencies sometimes transition older vehicles to become administrative or training vehicles,<sup>2</sup> or in many cases, they sell them.<sup>3</sup> Retired police cars on the road with their former agency's markings may create confusion for the public and law enforcement and enable illegal police impersonations.<sup>4</sup>

Section 319.14, F.S., provides requirements for the sale of police vehicles. A "police vehicle" is defined as a motor vehicle owned or leased by the state or a county or municipality and used in law enforcement.<sup>5</sup> A person may not knowingly offer for sale, sell, or exchange any vehicle that has been licensed, registered, or used as a police vehicle until the Department of Highway Safety and Motor Vehicles (DHSMV) has stamped in a conspicuous place on the certificate of title of the vehicle, or its duplicate, words stating the nature of the previous use of the vehicle.<sup>6</sup> Additionally, prior to consummating the sale, exchange, or transfer of a police vehicle, a person must disclose in writing to the purchaser, customer, or transferee the fact that the vehicle had previously been titled, registered, or used as a police vehicle.<sup>7</sup> A violation of s. 319.14(5), F.S., is a second degree misdemeanor.<sup>8</sup> Currently, there is no requirement for the removal of police markings prior to sale.

Although not statutorily required, many law enforcement agencies have adopted policies for removal before selling their vehicles. The DHSMV's Division of Florida Highway Patrol (FHP) decommissions vehicles by removing all police decals and painting over the tan portion of the marked patrol vehicle with oil-based black enamel paint in compliance with s. 321.03, F.S., which prohibits a person from coloring or causing to be colored any motor vehicle or motorcycle the same or similar color as those used by FHP.<sup>9</sup> Such person would be guilty of a first degree misdemeanor.<sup>10</sup>

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<sup>1</sup> Tom Kanewske, *What to do With Old Police Vehicles?*, Officer.com (February 15, 2017), available at <https://www.officer.com/on-the-street/vehicles-equipment/article/12291284/what-to-do-with-old-police-vehicles> (last visited February 13, 2020).

<sup>2</sup> *Id.*

<sup>3</sup> Thi Dao, *How to Remarket Patrol Vehicles*, Policemag.com (February 7, 2018), available at <https://www.policemag.com/342406/how-to-remarket-patrol-vehicles> (last visited February 13, 2020).

<sup>4</sup> Over the last five years, Florida has had 489 arrests for impersonating an officer. Brian Entin & Daniel Cohen, *They're not police cars – but they used to be. Retired law enforcement vehicle can create confusion*, WSVN News Miami (November 4, 2019), available at <https://wsvn.com/news/investigations/theyre-not-police-cars-but-they-used-to-be-retired-law-enforcement-vehicles-can-create-confusion/> (last visited February 13, 2020).

<sup>5</sup> Section 319.14(1)(c)1., F.S.

<sup>6</sup> Section 319.14(1)(a), F.S.

<sup>7</sup> Section 319.14(2), F.S.

<sup>8</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

<sup>9</sup> Department of Highway Safety and Motor Vehicles, *2020 Agency Legislative Bill Analysis for SB 1508*, (January 14, 2020) (on file with the Senate Committee on Infrastructure and Security).

<sup>10</sup> Section 321.03, F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000. Sections 775.082 and 774.083, F.S.

Additionally, it is a first degree misdemeanor for any unauthorized person to color or cause to be colored any motor vehicle or motorcycle the statutorily prescribed color combination of motor vehicles and motorcycles used by sheriffs of Florida and their deputies.<sup>11</sup>

Further, it is a first degree misdemeanor for an unauthorized person to own or operate a motor vehicle marked or identified in any manner by words, lettering, marking, insignia, or coloration officially used to identify the vehicle as a law enforcement vehicle or a vehicle used by a criminal justice agency<sup>12</sup> or fire department with the intent to mislead or cause another person to believe that such vehicle is an official vehicle of those agencies.<sup>13</sup>

### III. Effect of Proposed Changes:

The CS prohibits a person from knowingly selling, exchanging, or transferring a police vehicle without, before consummating the sale, exchange, or transfer, removing any police markings from the vehicle and certifying in writing to the purchaser, customer, or transferee the fact that the vehicle has had the police markings removed. The CS requires law enforcement agencies, sellers, and auction houses, before consummating the sale, exchange, or transfer, to provide an official letter of notification to the purchaser, customer, or transferee confirming the fact that the vehicle has had the police markings removed. A person<sup>14</sup> who knowingly sells, exchanges, or offers to sell or exchange a motor vehicle in violation of these provisions commits a second degree misdemeanor, which is punishable by up to 60 days in county jail and a fine of up to \$500.<sup>15</sup>

The CS defines “police markings” as decals, stickers, distinctive paint schemes, or other markings attached or applied to a police vehicle that identify the vehicle as a police vehicle.

The CS does not apply to sales, exchanges, or transfers of police vehicles between law enforcement agencies.

In addition, the CS does not apply to sales, exchanges, or transfers of police vehicles to members of the general public for the purposes of collection or display. However, upon the sale, exchange, or transfer of a police vehicle for either of those purposes, the seller, exchanger, or transferor shall provide a notice to the purchaser, customer, or transferee in substantially the following form:

USE OF THIS VEHICLE FOR THE DELIBERATE IMPERSONATION OF A  
PUBLIC OFFICER OR EMPLOYEE IS A FELONY OF THE THIRD DEGREE,  
PUNISHABLE AS PROVIDED IN SECTION 843.0855, FLORIDA STATUTES.

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<sup>11</sup> Section 30.46, F.S.

<sup>12</sup> For purposes of this section, as defined in s. 943.045(11), F.S., “criminal justice agency” means a court, the Department of Law Enforcement, the Department of Juvenile Justice, the protective investigations component of the Department of Children and Families, and 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.

<sup>13</sup> Section 843.085(2) and (5), F.S.

<sup>14</sup> Section 319.14(5), F.S., provides that any officer, agent, or employee of a person who knowingly authorizes, directs, aids in, or consents to sales contrary to this section are also subject to criminal liability.

<sup>15</sup> *Supra*, note 8.

The CS is effective July 1, 2020.

**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 CS may have a negative fiscal impact on sellers and auction houses that do not currently practice the removal of police markings before selling decommissioned police vehicles

C. Government Sector Impact:

The CS may have a negative fiscal impact on law enforcement agencies that do not currently practice the removal of police markings before selling decommissioned police vehicles.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 319.14

**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 Infrastructure and Security on February 17, 2020:**

The committee substitute:

- Provides that sellers and auction houses must provide an official letter of notification to the receiver confirming the fact that the vehicle has had the police markings removed.
- Provides that sales, exchanges, or transfers of police vehicles to members of the general public for the purposes of collection or display are exempt from the requirements of the bill. However, the seller, exchanger, or transferor must provide written notice that use of the vehicle for impersonation of a public officer or employee is a third degree felony.

**CS by Criminal Justice on February 11, 2020:**

The committee substitute:

- Revises the notification of police markings removal requirement.
- Revises the definition of “police markings” to include distinctive paints schemes and specifies that such markings must be used to identify the vehicle as a police vehicle.
- Exempts the sales, exchanges, or transfers of police vehicles between law enforcement agencies from the requirements of the bill.

- B. **Amendments:**

None.

By the Committees on Infrastructure and Security; and Criminal Justice; and Senator Taddeo

596-03783-20

20201508c2

1 A bill to be entitled  
 2 An act relating to police vehicles; amending s.  
 3 319.14, F.S.; prohibiting a person from knowingly  
 4 selling, exchanging, or transferring a police vehicle  
 5 without removing any police markings from the vehicle;  
 6 defining the term "police markings"; requiring law  
 7 enforcement agencies to provide an official letter of  
 8 notification that the police markings have been  
 9 removed; requiring sellers and auction houses to  
 10 provide an official letter of notification that the  
 11 police markings have been removed; exempting sales,  
 12 exchanges, or transfers of police vehicles between law  
 13 enforcement agencies from specified requirements;  
 14 exempting sales, exchanges, or transfers of police  
 15 vehicles to members of the public for the purposes of  
 16 collection or display from specified requirements;  
 17 requiring that a specified notice be provided to  
 18 certain purchasers, customers, and transferees;  
 19 providing an effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

22  
 23 Section 1. Present subsections (5) through (10) of section  
 24 319.14, Florida Statutes, are redesignated as subsections (6)  
 25 through (11), respectively, a new subsection (5) is added to  
 26 that section, and present subsection (5) of that section is  
 27 republished, to read:

28 319.14 Sale of motor vehicles registered or used as  
 29 taxicabs, police vehicles, lease vehicles, rebuilt vehicles,

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

596-03783-20

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30 nonconforming vehicles, custom vehicles, or street rod vehicles;  
 31 conversion of low-speed vehicles.-

32 (5) A person may not knowingly sell, exchange, or transfer  
 33 a police vehicle without, before consummating the sale,  
 34 exchange, or transfer, removing any police markings from the  
 35 vehicle. For purposes of this subsection, the term "police  
 36 markings" means decals, stickers, distinctive paint schemes, or  
 37 other markings attached or applied to a police vehicle which  
 38 identify the vehicle as a police vehicle.

39 (a) Law enforcement agencies, before consummating the sale,  
 40 exchange, or transfer of a police vehicle, shall provide an  
 41 official letter of notification to the purchaser, customer, or  
 42 transferee confirming the fact that the vehicle has had the  
 43 police markings removed.

44 (b) Sellers and auction houses, before consummating the  
 45 sale, exchange, or transfer of a police vehicle, shall provide  
 46 an official letter of notification to the purchaser, customer,  
 47 or transferee confirming the fact that the vehicle has had the  
 48 police markings removed.

49 (c)1. Sales, exchanges, or transfers of police vehicles  
 50 between law enforcement agencies are exempt from the  
 51 requirements of this subsection.

52 2. Sales, exchanges, or transfers of police vehicles to  
 53 members of the general public for the purposes of collection or  
 54 display are exempt from the requirements of this subsection.  
 55 However, upon the sale, exchange, or transfer of a police  
 56 vehicle for either of those purposes, the seller, exchanger, or  
 57 transferor shall provide a notice to the purchaser, customer, or  
 58 transferee in substantially the following form:

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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USE OF THIS VEHICLE FOR THE DELIBERATE IMPERSONATION OF A PUBLIC OFFICER OR EMPLOYEE IS A FELONY OF THE THIRD DEGREE, PUNISHABLE AS PROVIDED IN SECTION 843.0855, FLORIDA STATUTES.

(6) ~~(5)~~ A person who knowingly sells, exchanges, or offers to sell or exchange a motor vehicle or mobile home contrary to this section or any officer, agent, or employee of a person who knowingly authorizes, directs, aids in, or consents to the sale, exchange, or offer to sell or exchange a motor vehicle or mobile home contrary to this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. This act shall take effect July 1, 2020.



## Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair  
Committee on Rules

Subject: Committee Agenda Request

Date: February 18, 2020

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I respectfully request that CS / CS / Senate Bill #1508, relating to the removal of police vehicle markings prior to the sale of decommissioned police vehicles, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

Leader McGhee has filed the House version of the Bill, HB 1281.

\* CS/CS/SB 1508 was reported favorably by the Committee on Criminal Justice and the Committee on Infrastructure and Security.

A handwritten signature in black ink, appearing to be "Annette Taddeo", written over a horizontal line.

Senator Annette Taddeo  
Florida Senate, District 40

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7056

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Public Records/Active Threat Assessment and Management Records

DATE: February 24, 2020

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
<u>Hackett</u>	<u>McVaney</u>		<b>GO Submitted as Comm. Bill/Fav</b>
1. <u>Hackett</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**I. Summary:**

SB 7056 provides that exemptions from public inspection and copying active criminal intelligence information, active criminal investigative information, or other exempt information and records extend to exempt such information when shared with an agency or governmental entity in the furtherance of official duties and responsibilities under a multidisciplinary information-sharing agreement, or when shared with another criminal justice agency in furtherance of its official duties regardless of agreement.

The bill also exempts from public inspection and copying active threat assessment and active threat management records.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2025, unless reviewed and reenacted by the Legislature.

The bill contains a public necessity statement as required by the Florida Constitution.

Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for final passage.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect upon becoming a law.

## II. Present Situation:

### Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

### *Public Records Exemptions for Criminal Investigative and Intelligence Information*

Active criminal intelligence information and active criminal investigative information are exempt from s. 119.07(1), F.S., and Article I, s. 24(a), of the Florida Constitution.<sup>5</sup> Section 119.011(3)(a), F.S., defines “criminal intelligence information” as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Section 119.011(3)(b), F.S., defines “criminal investigative information” as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

The definitions of criminal intelligence and investigative information do not include some specific types of information, which is therefore public. This public information includes the time, date, location and nature of the crime, the charges, and the identities of the arrested person and the victims of the crime except as provided in s. 119.071(2)(h) or (o), F.S.<sup>6</sup> Also excluded from the definition of criminal intelligence and investigative information are documents that must be given to the person who is arrested, because of a law or agency rule.<sup>7</sup> An example of such a rule would be the discovery rules under the Florida Rules of Criminal Procedure.

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> 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)

<sup>4</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>5</sup> Section 119.071(2)(c)1., F.S. The definition of “active” is located in s. 119.011(3)(d), F.S.

<sup>6</sup> Section 119.011(c), F.S.

<sup>7</sup> Section 119.011(c)5., F.S.

Criminal intelligence and investigative information becomes public under two circumstances: 1) when information is given to the defendant through a pretrial discovery request; and 2) when the defendant's conviction and sentence are final.

After active criminal intelligence investigative information have been provided to a defendant through discovery, that information becomes public under certain circumstances.<sup>8</sup> Those circumstances include considerations about whether making discovery documents public will impede the defendant's right to a fair trial or the right of privacy of third parties.<sup>9</sup> A court may temporarily seal pretrial discovery, even if some of the pretrial discovery information is already public.<sup>10</sup> In addition, in criminal cases, discovery may be kept confidential and exempt from public disclosure until trial if the following conditions are met: 1) the information would defamatory or would jeopardize the safety of the witness; and 2) releasing the information would hurt the state attorney's ability to locate or prosecute a codefendant.<sup>11</sup>

Criminal intelligence and investigative information are considered "active" when they are "directly related to pending prosecutions or appeals."<sup>12</sup> Therefore, criminal intelligence investigative information becomes public "when the conviction and sentence becomes final... after direct appeal" (emphasis omitted).<sup>13</sup>

### ***Limited Effect of a "Confidential" or "Exempt" Designation***

The designation of a record as exempt, or as confidential and exempt, is effective only as to a public records request brought under Florida's public records laws. Therefore, these exemptions and confidentiality do not block access to government documents if there is an independent basis for that access.<sup>14</sup>

One such basis is a discovery request in a criminal case. The Florida Rules of Criminal Procedure require a prosecutor to disclose information about witnesses in discovery.<sup>15</sup> This requirement, at least in principle if not in a strict legal sense, is rooted in the "confrontation clause" of the United States Constitution.<sup>16</sup> The confrontation clause preserves a defendant's

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<sup>8</sup> *Post-Newsweek Stations, Fla. v. Doe*, 612 So. 2d 549, 551 (Fla. 1992). *Florida Freedom Newspapers, Inc., v. McCrary*, 520 So. 2d 32 (Fla. 1988). *Bludworth v. Palm Beach Newspapers, Inc.*, 176 So. 2d 775 (Fla. 5th DCA 1985).

<sup>9</sup> *Post-Newsweek Stations*, 612 So. 2d at 551. *Florida Freedom Newspapers*, 520 So. 2d.

<sup>10</sup> *Florida Freedom Newspapers*, 520 So. 2d at 36.

<sup>11</sup> Section 119.011(c)5.a. and b., F.S.

<sup>12</sup> Section 119.011(3)(d)2., F.S. However, "active" does not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation. Section 119.011(3)(d)2., F.S. Section 775.15, F.S., is where the criminal statute of limitations is located.

<sup>13</sup> *Allen v. Butterworth*, 756 So. 2d 52, 66 (FLA 2000).

<sup>14</sup> Generally, any confidentiality or exemption from public disclosure is eliminated by a record's entering a court file. Certain records remain confidential or exempt, however, even if they enter a court file. See s. 119.0714(1), F.S.

<sup>15</sup> Fla. R. Crim. P. 3.220(b) (Discovery: Prosecutor's Discovery Obligation). Section 119.07(8), F.S., addresses the relationship between discovery obligations and public records. However, the rules allow a court, on its own initiative or upon a motion of counsel, to restrict disclosure if the court finds that "there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from the disclosure that outweighs any usefulness of the disclosure to either party." Fla. R. Crim. P. 3.220(e) (Discovery: Restricting Disclosure).

<sup>16</sup> The Sixth Amendment of the U.S. Constitution provides: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be

right to confront a witness against him or her and to bring forward information that aids the jury in determining the truthfulness and reliability of the witness.<sup>17</sup> For example, the defendant might expose a witness's prejudice, bias, or ulterior motivation to lie; expose lies; test a witness's ability to perceive and remember; or expose weaknesses in the witness's testimony. This right to confront a witness "minimizes the risk that a judgment will be predicated on incomplete, misleading, or even deliberately fabricated testimony."<sup>18</sup>

### **Executive Agency Records – The Public Records Act**

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>19</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>20</sup> The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."<sup>21</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>22</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>23</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>24</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>25</sup>

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confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

<sup>17</sup> *Id.*

<sup>18</sup> Judge Joan Comparet-Cassani, *Balancing the Anonymity of Threatened Witnesses Versus a Defendant's Right of Confrontation: The Waiver Doctrine After Alvarado*, 39 SAN DIEGO L. REV. 1165 (Fall, 2002).

<sup>19</sup> Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

<sup>20</sup> Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

<sup>21</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>22</sup> Section 119.07(1)(a), F.S.

<sup>23</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>24</sup> FLA. CONST. art. I, s. 24(c).

<sup>25</sup> *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189

General exemptions from the public records requirements are contained in the Public Records Act.<sup>26</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>27</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.<sup>28</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>29</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>30</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>31</sup> public records or open meetings exemptions, with specified exceptions.<sup>32</sup> 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.<sup>33</sup>

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>34</sup> 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;<sup>35</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>36</sup> or

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(Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>26</sup> See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>27</sup> See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>28</sup> See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

<sup>29</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>30</sup> Section 119.15, F.S.

<sup>31</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>32</sup> 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.

<sup>33</sup> Section 119.15(3), F.S.

<sup>34</sup> Section 119.15(6)(b), F.S.

<sup>35</sup> Section 119.15(6)(b)1., F.S.

<sup>36</sup> Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>37</sup>

The Act also requires specified questions to be considered during the review process.<sup>38</sup> In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>39</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>40</sup>

### **Criminal Intelligence and Investigative Information**

Active criminal intelligence information and active criminal investigative information are exempt from public inspection and copying requirements, s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.<sup>41</sup> Exempt active criminal investigative information may be shared with another criminal justice agency and retain its protected status.<sup>42</sup>

“Criminal intelligence information” means information concerning “an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.”<sup>43</sup> Criminal intelligence information is considered “active” as long “as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities” or “is directly related to pending prosecutions or appeals.”<sup>44</sup>

“Criminal investigative information” is defined as information relating to “an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal

<sup>37</sup> Section 119.15(6)(b)3., F.S.

<sup>38</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>39</sup> See generally s. 119.15, F.S.

<sup>40</sup> Section 119.15(7), F.S.

<sup>41</sup> Section 119.071(2)(c)1., F.S.

<sup>42</sup> *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), review denied, 651 So. 2d 1192 (Fla. 1995). The City of Riviera Beach court held that exempt records of the West Palm Beach police department’s active criminal investigation concerning a shooting incident involving a police officer from Riviera Beach could be furnished to the Riviera Beach police department for use in a simultaneous administrative internal affairs investigation of the officer without losing their exempt status. *Accord Ragsdale v. State*, 720 So. 2d 203, 206 (Fla. 1998) (applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record).

<sup>43</sup> Section 119.011(3)(a), F.S.

<sup>44</sup> Section 119.011(3)(d), F.S.

investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.”<sup>45</sup> Such information is considered “active” as long “as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future” or “is directly related to pending prosecutions or appeals.”<sup>46</sup>

“Criminal justice agency” is defined to mean any law enforcement agency, court, prosecutor or any other agency charged by law with criminal law enforcement duties or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties. The term also includes the Department of Corrections.<sup>47</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 119.071(c)(2), F.S., to provide that exemptions from public inspection and copying for active criminal intelligence information, active criminal investigative information, or other exempt information and records extend to exempt such information when shared with an agency or governmental entity in the furtherance of official duties and responsibilities under a multidisciplinary information-sharing agreement, or when shared with another criminal justice agency in furtherance of its official duties regardless of agreement.

The bill further exempts from public inspection and copying active threat assessment and active threat management records. The threat assessment and threat management records shall be considered “active” as long as they relate to an ongoing good faith belief by the FDLE that a threat assessment or a threat management plan will lead to detection, reasonable anticipation, prevention, or monitoring of possible targeted violence when the assessment or records are in the possession of a criminal justice agency or its employees, a governmental agency, whether state or federal, or any other governmental entity pursuant to a multidisciplinary information-sharing agreement for a public safety purpose, including, but not limited to, a targeted violence threat assessment and management plan.

The bill defines the following terms:

- “Lead law enforcement agency” to mean the law enforcement agency designated as the lead agency in a multidisciplinary information-sharing agreement;
- “Multidisciplinary information-sharing agreement” to mean an agreement entered into between a law enforcement agency and another law enforcement agency, a criminal justice agency, or any other entity to share active criminal intelligence or active criminal investigative information for the purposes of furthering information sharing for law

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<sup>45</sup> Section 119.011(3)(b), F.S. *See Rose v. D’Alessandro*, 380 So. 2d 419 (Fla. 1980) (complaints and affidavits received by a state attorney in the discharge of his investigatory duties constitute criminal intelligence or criminal investigative information).

<sup>46</sup> Section 119.011(3)(d), F.S.

<sup>47</sup> Section 119.011(4), F.S.

enforcement criminal intelligence purposes, criminal investigative purposes, threat assessments, or threat management plans;

- “Targeted violence” to mean a situation involving an identifiable person or group of persons who actively pursue physical injury or harm toward an identifiable target or prospective victim, including, but not limited to, a specific person, a group of persons, an entity, or a location;
- “Threat assessment” to mean the process of collecting and sharing active criminal intelligence information or active criminal investigative information in a multidisciplinary effort to contextualize and understand a targeted violence threat; and
- “Threat management” to mean the process of developing, implementing, and monitoring an individualized plan in a multidisciplinary effort to intervene, mitigate, or prevent a targeted violence threat.

The public records exemptions in the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 2** provides a statement of public necessity, which states:

The Legislature finds that it is a public necessity that records related to active threat assessments and active threat management plans be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that it is a public necessity for law enforcement agencies and criminal justice agencies to be able to share active threat assessment and threat management records securely with vital multidisciplinary partners who have important roles in threat assessments and threat management plans and that the information retain its exempt status. The Legislature finds that the release of these records could hinder active criminal investigations and could cause harm to the person under the threat assessment and threat management plan and could potentially cause certain individuals to proceed with their intentions to cause targeted violence. The Legislature finds that the release of these records and the potential impact that the release may have on an individual under an active threat assessment or active threat management plan could cause harm to the residents in this state if such information were made public. The Legislature is gravely concerned and saddened by the horrific mass shootings perpetrated in this state. The Legislature is concerned about the increase in these targeted violence incidents and finds that it is important for law enforcement agencies, criminal justice agencies, and their multidisciplinary partners to use the valuable tool of threat assessments and threat management plans to proactively mitigate and prevent these threats and protect the people of this state.

**Section 3** provides that the bill takes effect upon becoming a law.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

**B. Public Records/Open Meetings Issues:*****Vote Requirement***

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for active threat assessment and active threat management records, 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 active criminal intelligence information, active criminal investigative information, and other exempt information and records shared with an agency or governmental entity in the furtherance of official duties and responsibilities under a multidisciplinary information-sharing agreement, as well as active threat assessment records, and active threat management records. This bill exempts only active criminal intelligence information, active criminal investigative information, and other exempt information and records shared with an agency or governmental entity in the furtherance of official duties and responsibilities under a multidisciplinary information-sharing agreement from the public records requirements, as well as active threat assessment records and active threat management records. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should be offset by authorized fees.<sup>48</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends the following section of the Florida Statutes: 119.071.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>48</sup> Section 119.07(2) and (4), F.S.

By the Committee on Governmental Oversight and Accountability

585-03763-20

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1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 119.071, F.S.; exempting from public records  
 4 requirements active threat assessment and active  
 5 threat management records; providing circumstances  
 6 under which such records are considered active;  
 7 defining terms; providing for future legislative  
 8 review and repeal of the exemption; providing a  
 9 statement of public necessity; providing an effective  
 10 date.  
 11  
 12 Be It Enacted by the Legislature of the State of Florida:  
 13  
 14 Section 1. Paragraph (c) of subsection (2) of section  
 15 119.071, Florida Statutes, is amended to read:  
 16 119.071 General exemptions from inspection or copying of  
 17 public records.—  
 18 (2) AGENCY INVESTIGATIONS.—  
 19 (c)1. Active criminal intelligence information and active  
 20 criminal investigative information are exempt from s. 119.07(1)  
 21 and s. 24(a), Art. I of the State Constitution.  
 22 2.a. A request made by a law enforcement agency to inspect  
 23 or copy a public record that is in the custody of another agency  
 24 and the custodian's response to the request, and any information  
 25 that would identify whether a law enforcement agency has  
 26 requested or received that public record are exempt from s.  
 27 119.07(1) and s. 24(a), Art. I of the State Constitution, during  
 28 the period in which the information constitutes active criminal  
 29 intelligence information or active criminal investigative

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30 information.  
 31 b. The law enforcement agency that made the request to  
 32 inspect or copy a public record shall give notice to the  
 33 custodial agency when the criminal intelligence information or  
 34 criminal investigative information is no longer active so that  
 35 the request made by the law enforcement agency, the custodian's  
 36 response to the request, and information that would identify  
 37 whether the law enforcement agency had requested or received  
 38 that public record are available to the public.  
 39 c. This exemption is remedial in nature, and it is the  
 40 intent of the Legislature that the exemption be applied to  
 41 requests for information received before, on, or after the  
 42 effective date of this paragraph.  
 43 3.a. Active criminal intelligence information and active  
 44 criminal investigative information or other exempt information  
 45 or records shared with another agency or governmental entity in  
 46 the furtherance of its official duties and responsibilities  
 47 under a multidisciplinary information-sharing agreement retain  
 48 their exempt status. Active criminal intelligence information  
 49 and active criminal investigative information and other exempt  
 50 information or records shared with another criminal justice  
 51 agency in the furtherance of its official duties retain their  
 52 exempt status as otherwise provided by law.  
 53 b. Active threat assessment and active threat management  
 54 records are exempt from s. 119.07(1) and s. 24(a), Art. I of the  
 55 State Constitution. Threat assessment and threat management  
 56 records shall be considered "active" as long as they relate to  
 57 an ongoing good faith belief by the Department of Law  
 58 Enforcement or the lead law enforcement agency that a threat

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59 assessment or a threat management plan will lead to detection,  
 60 reasonable anticipation, prevention, or monitoring of possible  
 61 targeted violence when the assessment or records are in the  
 62 possession of a criminal justice agency or its employees, a  
 63 governmental agency, whether state or federal, or any other  
 64 governmental entity pursuant to a multidisciplinary information-  
 65 sharing agreement.

66 c. As used in this subparagraph, the term:

67 (I) "Lead law enforcement agency" means the law enforcement  
 68 agency designated as the lead agency in a multidisciplinary  
 69 information-sharing agreement.

70 (II) "Multidisciplinary information-sharing agreement"  
 71 means an agreement entered into between a lead law enforcement  
 72 agency and another law enforcement agency, a criminal justice  
 73 agency, or any other entity to share active criminal  
 74 intelligence or active criminal investigative information for  
 75 the purposes of furthering information sharing for law  
 76 enforcement criminal intelligence purposes, criminal  
 77 investigative purposes, threat assessments, or threat management  
 78 plans.

79 (III) "Targeted violence" means a situation involving an  
 80 identifiable person or group of persons who actively pursue  
 81 physical injury or harm toward an identifiable target or  
 82 prospective victim, including, but not limited to, a specific  
 83 person, a group of persons, an entity, or a location.

84 (IV) "Threat assessment" means the process of collecting  
 85 and sharing active criminal intelligence information or active  
 86 criminal investigative information in a multidisciplinary effort  
 87 to contextualize and understand a targeted violence threat.

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88 (V) "Threat management" means the process of developing,  
 89 implementing, and monitoring an individualized plan in a  
 90 multidisciplinary effort to intervene, mitigate, or prevent a  
 91 targeted violence threat.

92 d. This subparagraph is subject to the Open Government  
 93 Sunset Review Act in accordance with s. 119.15 and shall stand  
 94 repealed on October 2, 2025, unless reviewed and saved from  
 95 repeal through reenactment by the Legislature.

96 Section 2. The Legislature finds that it is a public  
 97 necessity that records related to active threat assessments and  
 98 active threat management plans be made exempt from s. 119.07(1),  
 99 Florida Statutes, and s. 24(a), Article I of the State  
 100 Constitution. The Legislature finds that it is a public  
 101 necessity for law enforcement agencies and criminal justice  
 102 agencies to be able to share active threat assessment and active  
 103 threat management records securely with vital multidisciplinary  
 104 partners who have important roles in threat assessments and  
 105 threat management plans and that the information retain its  
 106 exempt status. The Legislature finds that the release of these  
 107 records could hinder active criminal investigations and could  
 108 cause harm to the person under the threat assessment and threat  
 109 management plan and could potentially cause certain individuals  
 110 to proceed with their intentions to cause targeted violence. The  
 111 Legislature finds that the release of these records and the  
 112 potential impact that the release may have on an individual  
 113 under an active threat assessment or active threat management  
 114 plan could cause harm to the residents in this state if such  
 115 information were made public. The Legislature is gravely  
 116 concerned and saddened by the horrific mass shootings

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117 perpetrated in this state. The Legislature is concerned about  
118 the increase in these targeted violence incidents and finds that  
119 it is important for law enforcement agencies, criminal justice  
120 agencies, and their multidisciplinary partners to use the  
121 valuable tools of threat assessments and threat management plans  
122 to proactively mitigate and prevent these threats and protect  
123 the people of this state.

124 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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/CS/SB 512

INTRODUCER: Rules Committee; Appropriations Committee; Health Policy Committee; and Senator Hutson

SUBJECT: Nonembryonic Stem Cell Banks

DATE: February 27, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	<b>Fav/CS</b>
2.	McKnight	Kynoch	AP	<b>Fav/CS</b>
3.	Rossitto-Van Winkle	Phelps	RC	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 512 creates section 381.4017, Florida Statutes, in order to authorize the administration of adult human nonembryonic stem cells and HCT/Ps and the use of such cells in health care products. The bill:

- Defines multiple terms relating to the receiving, manufacturing, storing, making, dispensing, delivering, and administering of adult human nonembryonic stem cells and HCT/Ps.
- Requires the Agency for Health Care Administration (AHCA) to license establishments meeting the definition of adult human nonembryonic stem cell banks (NSCBs) as health care clinics.
- Authorizes the AHCA to adopt rules consistent with federal regulations that include criteria for advertising, procedures and protocols, incident reporting, informed consent, and recordkeeping.
- Requires NSCBs to apply for a health care clinic license and meet current licensure requirements and additional requirements to be provided by the AHCA in rule.
- Provides licensure exemption for hospitals, ambulatory surgical centers, and clinical facilities affiliated with an accredited medical school that provides training to medical students, residents, or fellows.
- Requires that NSCBs comply with specified requirements, including commercial and professional liability coverage, appointment of a Medical Director that meets specific

qualification and notification requirements, and adherence to manufacturing processes for the collection, removal, manufacturing, processing, compounding, and implantation of nonembryonic stem cells.

The AHCA estimates that the bill will have a significant negative fiscal impact on its expenditures that will be offset by the positive fiscal impact to the AHCA's revenues from the licensure, registration and inspection fees collected from NSCBs under SB 7066, which is linked to the bill.<sup>1</sup> **See Section V.**

The bill takes effect on July 1, 2020, contingent on SB 7066 or similar legislation taking effect on that same date, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

## II. Present Situation:

### Stem Cells

Stem cells are unspecialized cells that have the ability to divide for indefinite periods of time in culture medium and to give rise to specialized cells.<sup>2</sup> Stem cells have the potential to develop into many different types of cells during early life and growth. In addition, in many human tissues, stem cells serve as an internal repair system, dividing essentially without limit, to replenish other cells as long as a person is still alive. When a stem cell divides, each new cell has the potential to either remain an undifferentiated stem cell or become a cell with a specialized function such as a muscle, red blood, or brain cell.<sup>3</sup>

### Federal Regulation of Stem Cells

Certain stem cells are labeled as a drug and subject to the U.S. Food and Drug Administration (FDA) regulation if the stem cell has been derived from structural tissue or non-structural tissue in a manufacturing process involving more than minimal manipulation.<sup>4</sup>

The FDA regulates articles containing or consisting of human cells or tissues that are intended for implantation, transplantation, infusion or transfer into a human recipient as human cells, tissues, or cellular or tissue-based products (HCT/Ps) which are known as stem cells.<sup>5</sup>

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<sup>1</sup> Agency for Health Care Administration, *CS/SB 512 Analysis* (Feb. 14, 2020) (on file with the Senate Committee on Appropriations).

<sup>2</sup> National Institutes of Health, Stem Cell Information, Glossary, *Stem Cells* <https://stemcells.nih.gov/glossary.htm#stemcells> (last visited Jan. 27, 2020).

<sup>3</sup> National Institutes of Health, Stem Cell Information, *Stem Cell Basics I.*, <https://stemcells.nih.gov/info/basics/1.htm> (last visited Jan. 27, 2020).

<sup>4</sup> U.S. Food and Drug Administration, Center for Evaluation and Research, Center for Devices and Radiological Health, Office of Combination Products, *Regulatory Considerations for Human Cells, Tissues, and Cellular and Tissue-Based Products: Minimal Manipulation and Homologous Use, Guidance for Industry and Food and Drug Administration Staff* (Nov. 2017, corrected Dec. 2017), available at <https://www.fda.gov/downloads/biologicsbloodvaccines/guidancecomplianceregulatoryinformation/guidances/cellularandgenetherapy/ucm585403.pdf> (last visited Jan. 27, 2020).

<sup>5</sup> 21 C.F.R. 1271.3(d).

The U.S. Center for Biologics Evaluation and Research (CBER) regulates HCT/Ps.<sup>6</sup> The CBER does not regulate the transplantation of vascularized human organ transplants such as the kidney, liver, heart, lung, or pancreas. The Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services oversees the transplantation of vascularized human organs.<sup>7</sup>

Minimally manipulated bone marrow is also used in stem cell treatments but is not considered by the FDA to be an HCT/Ps,<sup>8</sup> and thus is not regulated by the FDA.<sup>9</sup> The HRSA regulates minimally manipulated bone marrow stem cells used for transplant.<sup>10</sup>

Due to the unique nature of HCT/Ps, the FDA uses a tiered, risk-based approach to the regulation of HCT/Ps, rather than the federal Food, Drug and Cosmetic Act (federal FDCA), for products that meet the definition of a drug, biologic, or device. The tiered, risk-based approach includes recommendations on how the transmission of communicable diseases can be prevented; the process controls necessary to prevent contamination and preserve the integrity and function of the products; and how clinical safety and effectiveness can be assured.<sup>11</sup>

An HCT/P is exempt from registration and regulation under the Public Health Service Act (PHSA)<sup>12</sup> and 21 C.F.R. 1271, if the establishment.<sup>13</sup>

- Uses the HCT/Ps solely for nonclinical scientific or educational purposes;
- Removes HCT/Ps from an individual and implants such HCT/Ps into the same individual, during the same surgical procedure;
- Is a carrier who accepts, receives, carries, or delivers HCT/P's in the usual course of business;
- Does not recover, screen, test, process, label, package, or distribute, but only receives or stores HCT/P's, solely for implantation, transplantation, infusion, or transfer within its facility; or
- Only recovers reproductive cells or tissue and immediately transfers them into a sexually intimate partner of the cell or tissue donor.

If an individual is under contract with a registered establishment, and engaged solely in recovering cells or tissues and sending the recovered cells or tissues to the registered

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<sup>6</sup> See 21 C.F.R., 1270 and 1271. The CBER is a part of the U.S. Food and Drug Administration.

<sup>7</sup> U.S. Food and Drug Administration, *Tissue and Tissue Products* (as of July 11, 2019), available at <https://www.fda.gov/BiologicsBloodVaccines/TissueTissueProducts/default.htm> (last visited Jan. 27, 2020).

<sup>8</sup> See 21 C.F.R. 1271.3(d)(4).

<sup>9</sup> U.S. Food and Drug Administration, *FDA Warns About Stem Cell Therapies*, available at <https://www.fda.gov/ForConsumers/ConsumerUpdates/ucm286155.htm> (last visited Jan. 27, 2020).

<sup>10</sup> U.S. Department of Health and Human Services, Health Resources and Services Administration, *Healthcare Systems*, available at <https://www.hrsa.gov/sites/default/files/ourstories/organdonation/factsheet.pdf> (last visited Jan. 27, 2020).

<sup>11</sup> *Supra* note 4.

<sup>12</sup> 42 U.S.C. s. 262.

<sup>13</sup> Establishment means a place of business under one management, at one general physical location, that engages in the manufacture of human cells, tissues, and cellular and tissue-based products. Establishment includes: (1) Any individual, partnership, corporation, association, or other legal entity engaged in the manufacture of human cells, tissues, and cellular and tissue-based products; and (2) Facilities that engage in contract manufacturing services for a manufacturer of human cells, tissues, and cellular and tissue-based products. 21 C.F.R. 1271.3(b).

establishment, he or she is not required to register or list the establishment's HCT/Ps independently, but he or she must comply with all other applicable requirements.<sup>14</sup>

If an HCT/P does not meet the above criteria, and the manufacturer of the HCT/P does not qualify for an exception,<sup>15</sup> the HCT/P will be regulated as a drug, device, and/or biological product under the federal FDCA, the PHSA,<sup>16</sup> and applicable regulations;<sup>17</sup> and premarket review will be required.<sup>18</sup>

According to the FDA, if a manufacturer or establishment isolates cells from structural tissue to produce a cellular therapy product, the definition of minimal manipulation applies regardless of the method used to isolate the cells. The definition applies because the assessment of whether the HCT/P is a structural tissue or cellular/nonstructural tissue is based on the characteristics of the HCT/P as it exists in the donor, prior to recovery, and prior to any processing that takes place.<sup>19</sup>

Federal law requires tissue establishments<sup>20</sup> that do not meet an exemption to:

- Screen and test donors;
- Prepare and follow written procedures for prevention of the spread of communicable disease; and
- Maintain records.<sup>21</sup>

The FDA has published rules to broaden the scope of products subject to regulation and to include more comprehensive requirements to prevent the introduction, transmission, and spread of communicable disease. The requirements are intended to improve protection of the public health while minimizing regulatory burden.<sup>22</sup>

The only HCT/Ps that are FDA-approved for use in the United States consist of blood-forming stem cells, referred to as hematopoietic progenitor cells, derived from cord blood. These products are approved for limited use in patients with disorders that affect the hematopoietic system – the body system that is involved in the production of blood. The FDA-approved stem cell products are listed on the FDA website.<sup>23</sup>

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<sup>14</sup> 21 C.F.R. 1271.15.

<sup>15</sup> 21 C.F.R., 1271.10, 1271.15 and 1271.155.

<sup>16</sup> *Supra* note 12.

<sup>17</sup> 21 C.F.R. 1271.

<sup>18</sup> *Supra* note 4.

<sup>19</sup> *Id.*

<sup>20</sup> *Supra* note 13.

<sup>21</sup> *See* 21 C.F.R 1270 and 1271.2121.

<sup>22</sup> *Supra* note 7.

<sup>23</sup> U.S. Food and Drug Administration, *FDA Regulation of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/P's) Product List* (page updated Feb. 2, 2018), available at <https://www.fda.gov/vaccines-blood-biologics/tissue-tissue-products/fda-regulation-human-cells-tissues-and-cellular-and-tissue-based-products-hctps-product-list> (last visited Jan. 31, 2020).

## Florida Regulation of Stem Cells

### *Stem Cell Preparation/Manufacturing*

The registration of stem cell banks does not exist under current Florida law. The Department of Business and Professional Regulation (DBPR) administers and enforces the Florida Drug and Cosmetic Act to prevent fraud, adulteration, misbranding, or false advertising in the preparation, manufacture, repackaging, or distribution of drugs, devices, and cosmetics.<sup>24</sup> In Florida, “a person may not sell, offer for sale, hold for sale, manufacture, repackage, distribute, or give away any new drug unless an approved application has become effective under the federal act or unless otherwise permitted by the Secretary of the United States Department of Health and Human Services for shipment in interstate commerce.”<sup>25</sup>

The Florida Drug and Cosmetic Act defines a “drug” as an article that is:

- Recognized in the current edition of the United States Pharmacopoeia and National Formulary (USP-NF),<sup>26</sup> official Homeopathic Pharmacopoeia of the United States (HPUS),<sup>27</sup> or any supplement to any of those publications;
- Intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals;
- Intended to affect the structure or any function of the body of humans or other animals; or
- Intended for use as a component of any article:
  - Listed in the USP-FM, or HPUS;
  - Used in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals;
  - Used to affect the structure or any function of the body of humans or other animals; and
  - That includes active pharmaceutical ingredients.<sup>28</sup>

The Florida Drug and Cosmetic Act defines the manufacturing of a drug to mean the preparation, deriving, compounding, propagation, processing, producing, or fabrication of a substance into a drug.<sup>29</sup>

Stem cells recovered, processed, and implanted in Florida that meet the above definition are “unapproved new drugs” under both federal and state regulation and require a manufacturing permit issued by the DBPR to ensure the drugs are manufactured in accordance with good manufacturing practices.<sup>30</sup>

<sup>24</sup> See part I of ch. 499, F.S.

<sup>25</sup> Section 499.023, F.S.

<sup>26</sup> The USP-NF is a combination of two compendia, the United States Pharmacopeia (USP) and the National Formulary (NF). It contains standards for medicines, dosage forms, drug substances, excipients, biologics, compounded preparations, medical devices, dietary supplements, and other therapeutics. See 21 U.S.C. s. 301(g)(1).

<sup>27</sup> The HPUS is declared a legal source of information on drug products (along with the USP/NF) in the Federal Food Drug and Cosmetic Act, 21 U.S.C. § 301. Section 201(g)(1) of the Act. 21 U.S.C. s. 321 defines the term “drug” as articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary or any supplement to any of them.

<sup>28</sup> Section 499.003(17), F.S.

<sup>29</sup> Section 499.003(28), F.S.

<sup>30</sup> Department of Business and Professional Regulation, Division of Drugs, Devices and Cosmetics, *Does my company need a permit?*, available at <http://www.myfloridalicense.com/DBPR/drugs-devices-and-cosmetics/do-i-need-a-license/#1508505246226-7153ba5b-b4c4> (last visited Jan. 31, 2020). See also s. 499.003(28), F.S.

The Florida Drug and Cosmetic Act defines the “distribution” of a drug to include the selling, purchasing, trading, delivering, handling, storing, or receiving of a drug; but does not include the administration or dispensing of a drug.<sup>31</sup>

### ***Stem Cell Implantation or Transplantation***

Stem cells may be collected, processed, and implanted or transplanted in a physician’s office, health care clinic, ambulatory surgical center, or hospital.<sup>32</sup> In order to ship, mail, or deliver, in any manner, a medicinal drug into Florida, a nonresident pharmacy must be registered under s. 465.0156, F.S. In order to ship, mail, deliver, or dispense, in any manner, a compounded sterile product into Florida, a nonresident pharmacy, or an outsourcing facility, must hold a nonresident sterile compounding permit issued by the Board of Pharmacy (BOP).<sup>33</sup>

### **Physician’s Office**

The Department of Health (DOH) Office of Surgery Registration and Inspection Program was established to register and set standards for allopathic and osteopathic physicians performing surgery in an office setting. The DOH requires all physicians who perform the following to register their office with the DOH:

- Liposuction procedures where more than 1,000 cubic centimeters of supernatant fat is removed;
- Level II procedures; and
- All Level III surgical procedures.<sup>34</sup>

Each registered physician’s office must establish financial responsibility<sup>35</sup> and designate a physician who is responsible for the office’s compliance with the office health and safety requirements. The designated physician must have a full, active, and unencumbered license and must practice at the office for which he or she is responsible. Within ten days after the termination of the designated physician, the office must notify the DOH of the designation of another physician to serve as the designated physician. If the office fails to comply with these requirements the DOH may suspend the registration.<sup>36</sup>

The DOH will inspect registered physicians’ offices that are not nationally accredited, to ensure the safety of the people of Florida.<sup>37</sup>

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<sup>31</sup> Section 499.003(16), F.S.

<sup>32</sup> See ss. 395.002, 458.328, 459.0138, and 400.9935, F.S.; Rules 64B8-9.009 and 64B15-14.007, F.A.C..

<sup>33</sup> Section 465.0158, F.S.

<sup>34</sup> Sections 458.328 and 459.0138, F.S.; Rules 64B8-9.009 and 64B15-14.007, F.A.C..

<sup>35</sup> Section 458.328(1)(c), F.S.

<sup>36</sup> Section 458.328(1)(b), F.S.

<sup>37</sup> Department of Health, Licensing and Regulation, *Office Surgery Registration*, available at <http://www.floridahealth.gov/licensing-and-regulation/office-surgery-registration/index.html> (last visited Jan. 31, 2020).

## Health Care Clinics

The Health Care Clinic Act<sup>38</sup> provides the AHCA with licensing and regulatory authority to provide standards and oversight for health care clinics.<sup>39</sup> A clinic is defined as an entity where health care services are provided and which tenders charges for reimbursement for such services. Numerous exceptions to licensure exist.<sup>40</sup> The AHCA interprets the scope of its regulatory powers to solely include entities that bill third parties, such as Medicare, Medicaid, and insurance companies. Entities that provide health care services and accept “cash only” for services are excluded from the definition of “clinic” and are not subject to licensure or regulation by the AHCA.<sup>41</sup>

## Hospitals and Ambulatory Surgical Centers

The AHCA is responsible for licensing, registering, and regulating hospitals and ambulatory surgical centers (ASCs) pursuant to ch. 395, F.S. An ASC is a facility, the primary purpose of which is to provide elective surgical care, in which the patient is admitted to and discharged from such facility within 24 hours, and which is not part of a hospital.<sup>42</sup>

## Regulation of Physicians in Florida

The Board of Medicine (BOM) and the Board of Osteopathic Medicine (BOOM) (the Boards) within the DOH have the authority to adopt rules to regulate the practice of medicine and osteopathic medicine, respectively. The boards have authority to establish, by rule, standards of practice and standards of care for particular settings.<sup>43</sup> Such standards may include education and training, medications including anesthetics, assistance of and delegation to other personnel, sterilization, performance of complex or multiple procedures, records, informed consent, and policy and procedures manuals.<sup>44</sup>

Currently, the BOM is warning physicians and consumers that they should be aware of the risks involved in stem cell therapies and regenerative medicine that have not been FDA-approved.<sup>45</sup> Although certain stem-cell therapies offer hope and hold great potential in treating devastating conditions, the FDA has approved few treatments involving stem cells. The BOM warns physicians providing stem cell treatment that he or she should have an investigational new drug application (IND) or a single patient IND for Compassionate or Emergency Use.<sup>46</sup> Florida does not specifically regulate clinics that perform treatments using stem cells, but the Boards have authority to investigate and discipline physicians who fail to meet the standard of care for providing any medical services.

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<sup>38</sup> Part X of ch. 400, F.S.

<sup>39</sup> Section 400.990, F.S.

<sup>40</sup> Section 400.9905(4), F.S.

<sup>41</sup> *Id.*

<sup>42</sup> Section 395.002(3), F.S.

<sup>43</sup> Sections 458.331(v) and 459.015(z), F.S.

<sup>44</sup> *Id.*

<sup>45</sup> The Department of Health, Board of Medicine, *Information on Stem Cell Clinics Offering Unapproved Therapies*, available at <http://flboardofmedicine.gov/latest-news/october-2015-newsletter/> (last visited Jan. 31 2020).

<sup>46</sup> *Id.*

### III. Effect of Proposed Changes:

The bill creates s. 381.06017, F.S., relating to nonembryonic stem cell banks (NSCBs). The bill defines “adult human nonembryonic stem cells” as cells derived from adult human nonembryonic HCT/Ps through enzymatic digestion, mechanical disruption, or similar processing. The term includes only drugs, devices, or biological products that are approved by the United States Food and Drug Administration.

The bill defines “HCT/Ps” as human cells, tissues, or cellular or tissue-based products that are intended for implantation, transplantation, infusion, or transfer into a human recipient and specifically excludes from the meaning of HCT/Ps the following:

- Vascularized human organs for transplantation;
- Whole blood, blood components, blood derivative products, or platelet-rich plasma;
- Human secretions, including milk, collagen, and cell factors, but not semen;
- Minimally manipulated bone marrow that is for homologous use only and that is not combined with any other article except water, crystalloids, or sterilizing, preserving, or storage agents;
- Ancillary products used in the manufacture of nonembryonic adult human allogenic or autologous HCT/Ps;
- Cells, tissue, or organs derived from animals;
- In vitro diagnostic products; and
- Blood vessels recovered with an organ for transplantation.

The bill also defines the following specific terms relating to the dispensing, making, storing, and administration of nonembryonic stem cells:

“Dispense” has the same meaning as in s. 465.003(6), F.S.<sup>47</sup>

“Establishment” means a place of business which is at one general physical location and may extend to one or more contiguous suites, units, floors, or buildings operated and controlled exclusively by entities under common operation and control. The term includes multiple buildings with an intervening thoroughfare if the buildings are under common exclusive ownership, operation, and control. For purposes of permitting, each suite, unit, floor, or building must be identified in the most recent permit application.

“FD&C Act” means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. ss. 301 et seq.; 52 Stat. 1040 et seq.

“Minimally manipulated” means:

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<sup>47</sup> Under s. 465.003(6), F.S., “dispense” means the transfer of possession of one or more doses of a medicinal drug by a pharmacist to the ultimate consumer or her or his agent. As an element of dispensing, the pharmacist shall, prior to the actual physical transfer, interpret and assess the prescription order for potential adverse reactions, interactions, and dosage regimen she or he deems appropriate in the exercise of her or his professional judgment, and the pharmacist shall certify that the medicinal drug called for by the prescription is ready for transfer. The pharmacist shall also provide counseling on proper drug usage, either orally or in writing, if in the exercise of her or his professional judgment counseling is necessary. The actual sales transaction and delivery of such drug shall not be considered dispensing. The administration shall not be considered dispensing.

- For structural tissues, processing that does not alter the original characteristics of the tissue which relate to the tissue's utility for reconstruction, repair, or replacement; or
- For cells or nonstructural tissues, processing that does not alter the relevant biological characteristics of the cell or tissue; and
- For both structural and nonstructural tissues, the washing, rinsing, cleaning, sizing, shaping, or concentrating of adult human nonembryonic HCT/Ps which does not alter the relevant characteristics or basic functions of the tissue or cell.

“Nonembryonic stem cell bank” is a publicly or privately owned establishment that:

- Operates its own laboratories;
- Retains control over all aspects of processing and storage;
- Is managed by a single entity; and
- Performs any of the following activities in the course of its business:
  - Engages in the manufacture, use, implantation, transplantation, infusion, dispensing, transfer, or storage of adult human allogenic and autologous nonembryonic stem cells.
  - Accepts, receives, carries, or delivers human allogenic and autologous nonembryonic stem cells, drugs, or products that are approved by the United States Food and Drug Administration and regulated as drugs, devices, or biological products.
  - Recovers, collects, screens, and tests, in the facility, adult human autologous nonembryonic HCT/Ps from a specific patient for implantation, transplantation, infusion, or transfer back into the same patient during a single surgery within the facility.
  - Provides patient-specific health care services using adult human autologous nonembryonic HCT/Ps in the facility during a single procedure.
  - Advertises adult human nonembryonic stem cell services or adult human autologous nonembryonic HCT/P services, including, but not limited to the collection, manufacture implantation, transplantation, infusion, transfer, storage, dispensing, use, or purported use, of United States Food and Drug Administration-approved adult human autologous nonembryonic stem cells or adult human autologous nonembryonic HCT/Ps that are intended to diagnose, cure, mitigate, treat, provide therapy for, or prevent an injury or a disease.
  - Performs any procedure that is intended to collect or store adult human autologous nonembryonic HCT/Ps for autonomous homologous use or diagnoses, cures, mitigates, treats, provides therapy for, or prevents an injury or a disease through the use, or purported use, of adult human autologous nonembryonic HCT/Ps.
  - Compounds patient-specific adult human autologous nonembryonic HCT/Ps into a drug product by combining or mixing the patient-specific adult human nonembryonic HCT/Ps, at the prescriptive direction of a licensed physician authorized within the scope of his or her license to prescribe and administer adult human autologous nonembryonic HCT/Ps with one or more drugs or products to create a patient-specific drug or product.
  - Dispenses adult human autologous nonembryonic stem cells or HCT/Ps to any of the following for a specific patient pursuant to a valid order from a licensed physician authorized within the scope of his or her license to prescribe and administer adult human autologous nonembryonic HCT/Ps: the specific patient's physician with privileges to practice at the nonembryonic stem cell bank; or, for office use, the specific patient's physician's office or a health care facility or treatment setting where the physician has privileges to administer adult human autologous nonembryonic HCT/Ps.

“Office use” includes the provision and administration of any United States Food and Drug Administration-approved adult human nonembryonic stem cell drug, compounded drug, or compounded product regulated as a drug, device, or any biological product under the FD&C Act, the PHS Act, 42 U.S.C. 262, s. 351, or part I of chapter 499, to a patient’s physician in the physician’s office or in a health care facility or treatment setting, including a hospital, an ambulatory surgical center, or a health care clinic licensed under ch. 395 or ch. 400, F.S. The term also includes the patient-specific dispensing, provision, or administration of the patient’s adult human autologous nonembryonic HCT/Ps.

“PHS Act” means the Public Health and Safety Act, 42 U.S.C. ss. 262 et seq., and applicable regulations, including 21 C.F.R. part 1271.

“Physician” means a person who is licensed to practice medicine under ch. 458, F.S., or osteopathic medicine under ch. 459, F.S.

The bill requires NSCBs that manufacture adult human nonembryonic HCT/Ps to register with and submit a list of all HCT/Ps manufactured to the Food and Drug Administration and obtain a permit from the DBPR, if the HCT/P manufactured is:

- Minimally manipulated;
- Intended only for homologous use;
- Manufactured through a process that does not involve the combination of the cells or tissue with another article, except water, crystalloids, or a sterilizing, preserving, or storing agent; and
- For an adult human nonembryonic HCT/P, either:
  - Does not have a systemic effect and is not dependent upon the metabolic activity of living cells for their primary function; or
  - Has a systemic effect or is dependent upon the metabolic activity of living cells for its primary function and is for autologous use or for allogenic use in a first-degree or second-degree blood relative.

The bill provides that:

- NSCBs that manufacture adult human nonembryonic HCT/Ps that do not meet the above criteria are exempt from the registration and listing requirements of s. 361 of the PHS Act but must obtain a permit from and submit a list of all HCT/Ps manufactured to the DBPR if the establishment:
  - Uses the adult human nonembryonic HCT/Ps for nonmedicinal scientific purposes; or
  - Removes human adult nonembryonic HCT/Ps from a patient and implants the same HCT/Ps into the same patient during the same surgical procedure with only minimal manipulation of the HCT/Ps which does not alter the original relevant biological characteristics of the cells or tissues.
- NSCBs that manufacture adult human nonembryonic HCT/Ps are prohibited from manipulating, more than minimally, through enzymatic digestion, mechanical disruption, or similar processing, any adult human nonembryonic stem cell or HCT/P to alter the HCT/P’s original structural characteristics or relevant biological characteristics or to isolate differentiated cells from undifferentiated cells that have lost their original structural function, so that the undifferentiated cells can be differentiated into a specialized cell type, unless the

nonembryonic stem cell bank has first registered the HCT/P with the United States Food and Drug Administration and the Department of Business and Professional Regulation as a drug, device, or biological product manufacturer and complies with all applicable regulations under the FD&C Act, the PHS Act, 21 C.F.R. parts 1-1299, and part I of chapter 499.

- An NSCB that advertises, collects, stores, manufactures, dispenses, compounds, uses, or purports to use adult human nonembryonic stem cells or adult human autologous nonembryonic HCT/Ps, is deemed a clinic and must comply with all of the following requirements:
  - Adhere to the current good manufacturing practices for the collection, removal, manufacturing, processing, using, compounding, and implantation of nonembryonic stem cells, or products containing them, under Florida and federal law.
  - Obtain a health care clinic license and register each establishment separately, unless the clinic is a facility licensed under ch. 395, F.S., or the clinic is affiliated with an accredited medical school that provides training to medical students, residents, or fellows.
  - Have a physician medical director, with a full, active, and unencumbered license, who actively practices at the NSCB, and who is responsible for the NSCB's compliance with all licensure, operations and good manufacturing practices requirements.
  - Notify the AHCA, in writing, on a form approved by the AHCA within 10 days after termination of a physician medical director; and notify the AHCA within 10 days after such termination of the identity of the new physician medical director who has assumed the responsibilities for the NSCB. Failure to have a physician medical director practicing at the location of the NSCB must be the basis for a summary suspension of the NSCB's license pursuant to s. 400.607 or s. 120.60(6), F.S.
  - Maintain commercial and professional liability insurance in an amount not less than \$250,000 per claim.
  - Operate each establishment using the same name as the one used to obtain the health care clinic license; and requiring all invoices, packing slips, and other business records to list the same name.
  - Obtain a pharmacy permit for each person and establishment before dispensing, offering office use for the compounding of human nonembryonic stem cells, or dispensing a compounded product for office use.

The bill prohibits the sale or dispensing of human nonembryonic stem cells, a compounded drug containing human nonembryonic stem cells; or products containing human nonembryonic stem cells by any person or establishment, other than the NSCB or pharmacist at the NSCB that manufactured the human nonembryonic stem cells, the compounded drug, or product containing human nonembryonic stem cells, except that:

- A health care practitioner who requests the dispensing of the human nonembryonic stem cells, compounded drug, or compounded product from the manufacturing NSCB may sell or dispense such items to his or her patient if the health care practitioner is authorized within the scope of his or her license to prescribe and administer human nonembryonic stem cells; or
- A pharmacist, pharmacy, or establishment that requests the dispensing of the human nonembryonic stem cells, compounded drug, or compounded product from the manufacturing NSCB may sell or dispense such items to a health care practitioner who is authorized within the scope of his or her license to prescribe and administer human nonembryonic stem cells to patients.

The bill prohibits a physician, advanced practice registered nurse, or a physician assistant from practicing in a NSCB that is not licensed with the AHCA. The license of a health care practitioner who violates this paragraph is subject to disciplinary action by the appropriate regulatory board.

The bill requires health care practitioners to adhere to the applicable current good manufacturing practices for the collection, removal, manufacturing, processing, compounding, and implantation of stem cells or products containing stem cells pursuant to federal regulations.

The bill requires the AHCA to adopt rules necessary to administer the licensure and regulation of NSCBs, including, but not limited to, rules regarding all of the following, which must be consistent with the best practices specified in federal regulations:

- Advertising;
- NSCB procedures and protocols for the collection, manufacturing, storing, dispensing, and use of nonembryonic stem cells, drugs containing nonembryonic stem cells, and products containing nonembryonic stem cells in accordance with the applicable current best practices;
- Adverse incident reportings;
- Informed consent; and
- Recordkeeping, record retention, and availability of records for inspection.

The bill takes effect on July 1, 2020, contingent on SB 7066<sup>48</sup> or similar legislation taking effect on that same date, if such legislation is adopted in the same legislative session or an extension thereof and becomes 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.

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<sup>48</sup> SB 7066 is a stand-alone bill providing that establishments meeting criteria for permitting, registration, or licensure as required under CS/CS/CS/SB 512 must pay any fees associated with such permitting, registration, or licensure.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

CS/CS/CS/SB 512 requires the AHCA to license establishments meeting the definition of a nonembryonic stem cell bank (NSCB) as a health care clinic. NSCBs are required to maintain commercial and professional liability insurance in an amount not less than \$250,000 per claim.

**C. Government Sector Impact:**

The AHCA estimates a recurring increase in workload and costs associated with the registration of NSCBs as health care clinics. Specifically, the AHCA estimates the need for three full-time equivalent positions and \$285,007 in State Fiscal Year 2020-2021 and a recurring \$300,250 thereafter to implement the bill's requirements.<sup>49</sup>

The anticipated increase in expenditures by the AHCA will be offset by the revenues collected under SB 7066, which is linked to the bill, from the facilities that the AHCA estimates may require a health care clinic license under the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 381.06017 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS/CS by Rules on February 26, 2020:**

The CS:

- Defines additional terms, clarifies definitions, removes definition of compounding to align the bill with Federal law;
- Limits who can operate a NSCB to an establishment:
  - That operates their own laboratories;

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<sup>49</sup> *Id.*

- Retains control over all aspects of processing and storage; and
- Is managed by a single entity.
- Limits practitioners to Florida licensed physicians authorized within the scope of their license to prescribe and administer adult human nonembryonic cells or tissue with one or more drugs or products to create a patient-specific drug or product;
- Required NSCBs to registered with the FDA if they are actually manufacturing more than minimally manipulated cells that have lost their structural characteristics.

**CS/CS by Appropriations on February 20, 2020:**

The CS:

- Removes the requirement for nonembryonic stem cell banks licensed as health care clinics to pay all fees associated with licensure, registration, and inspection.
- Provides a contingent effective date based on SB 7066 or similar legislation taking effect on the same date, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

**CS by Health Policy on February 4, 2020:**

The CS:

- Creates s. 381.06017, F.S., rather than s. 381.4017, F.S., which authorizes NSCB's to operate in Florida;
- Requires NSCBs to register with the AHCA as a health care clinic, rather than the DOH;
- Defines an NSCB broadly, not just a facility that stores nonembryonic stem cells, but as any establishment that:
  - Manufactures, collects, or stores human embryonic stem cells;
  - Provides patient-specific health care services using human nonembryonic stem cells;
  - Advertises human nonembryonic stem cell services;
  - Performs procedures that:
    - 1) Collects or stores human embryonic stem cells; or
    - 2) Use non-FDA approved human nonembryonic stem cells, alone, or as a compounded drug or product, to diagnose, cure, treat, provide therapy for, or to prevent injury or disease; or
  - Compounds human nonembryonic stem cells into a compounded drug or product.
- Authorizes the administration of nonembryonic stem cells only by health care practitioners that the scope of the practitioner's license permits the prescribing and administering of human nonembryonic stem cells; and does not authorize:
  - The self-administration of nonembryonic stem cells; or
  - The administration of nonembryonic stem cells by just any person licensed or authorized to administer, or assist in the administration of, medications or health care;
- Does not authorize every pharmacy, owned or operated in Florida, to compound health care products using nonembryonic stem cells either alone or with other sterile ingredients.
- Does not authorize a person to import any sterile compound, drug, or other treatment containing nonembryonic stem cells if such compound, drug, or other treatment:

- Was obtained legally from the jurisdiction from which it came; and
- Is for personal use.
- Requires the NSCB to carry both commercial and liability insurance in an amount not less than \$250,000 per claim, where the original bill did not specify limits; and
- Authorizes the AHCA to adopt rules necessary to administer the licensure and regulation of NSCBs.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2020	.	
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The Committee on Rules (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 381.06017, Florida Statutes, is created  
to read:

381.06017 Nonembryonic stem cell banks; collecting,  
manufacturing, storing, dispensing, and using adult human  
nonembryonic stem cells and HCT/Ps.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Adult human nonembryonic stem cells" means cells that



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12 are derived from adult human nonembryonic HCT/Ps through  
13 enzymatic digestion, mechanical disruption, or similar  
14 processing. The term includes only drugs, devices, or biological  
15 products that are approved by the United States Food and Drug  
16 Administration and are regulated by the FD&C Act, s. 351 of the  
17 PHS Act, or part I of chapter 499.

18 (b) "Agency" means the Agency for Health Care  
19 Administration.

20 (c) "Allogenic use" means the collection of human cells or  
21 tissue from one person and the implantation, transplantation,  
22 infusion, or transfer of those human cells or tissue into  
23 another person.

24 (d) "Autologous use" means the implantation,  
25 transplantation, infusion, or transfer of human cells or tissue  
26 back into the individual from which they were collected.

27 (e) "Dispense" has the same meaning as in s. 465.003(6).

28 (f) "Establishment" means a place of business which is at  
29 one general physical location and may extend to one or more  
30 contiguous suites, units, floors, or buildings operated and  
31 controlled exclusively by entities under common operation and  
32 control. The term includes multiple buildings with an  
33 intervening thoroughfare if the buildings are under common  
34 exclusive ownership, operation, and control. For purposes of  
35 permitting, each suite, unit, floor, or building must be  
36 identified in the most recent permit application.

37 (g) "FD&C Act" means the Federal Food, Drug, and Cosmetic  
38 Act, 21 U.S.C. ss. 301 et seq.; 52 Stat. 1040 et seq.

39 (h) "HCT/Ps" means human cells, tissues, or cellular or  
40 tissue-based products that are intended for implantation,



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41 transplantation, infusion, or transfer into a human recipient.

42 The term does not include any of the following:

43 1. Vascularized human organs for transplantation.

44 2. Whole blood, blood components, blood derivative  
45 products, or platelet-rich plasma that are exempt under 21 C.F.R.  
46 607.65.

47 3. Human secretions, including milk, collagen, and cell  
48 factors, but not semen.

49 4. Minimally manipulated bone marrow that is for homologous  
50 use only and that is not combined with any other article except  
51 water, crystalloids, or sterilizing, preserving, or storage  
52 agents.

53 5. Ancillary products used in the manufacture of  
54 nonembryonic adult human allogenic or autologous HCT/Ps.

55 6. Cells, tissue, or organs derived from animals.

56 7. In vitro diagnostic products.

57 8. Blood vessels recovered with an organ for  
58 transplantation.

59 (i) "Homologous use" means the repair, reconstruction, or  
60 supplementation of a recipient's cells or tissues with adult  
61 human nonembryonic stem cells or adult human nonembryonic HCT/Ps  
62 that perform the same basic function or functions in the  
63 recipient as in the donor.

64 (j) "Manufacture" means the preparing, deriving,  
65 compounding, propagation, processing, producing, or fabricating  
66 of any drug, device, or cosmetic.

67 (k) "Minimally manipulated" means:

68 1.a. For structural tissues, processing that does not alter  
69 the original characteristics of the tissue which relate to the



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70 tissue's utility for reconstruction, repair, or replacement; or  
71 b. For cells or nonstructural tissues, processing that does  
72 not alter the relevant biological characteristics of the cells  
73 or tissues.

74 2. The washing, rinsing, cleaning, sizing, shaping, or  
75 concentrating of adult human nonembryonic HCT/Ps which does not  
76 alter the relevant characteristics or basic functions of the  
77 tissue or cell.

78 (1) "Nonembryonic stem cell bank" means a publicly or  
79 privately owned establishment that operates its own  
80 laboratories, retains control over all aspects of processing and  
81 storage, is managed by a single entity, and performs any of the  
82 following activities in the course of its business:

83 1. Engages in the manufacture, use, implantation,  
84 transplantation, infusion, dispensing, transfer, or storage of  
85 adult human allogenic and autologous nonembryonic stem cells.

86 2. Accepts, receives, carries, or delivers human allogenic  
87 and autologous nonembryonic stem cells, drugs, or products that  
88 are approved by United States Food and Drug Administration and  
89 regulated as drugs, devices, or biological products by the FD&C  
90 Act, s. 251 of the PHS Act, or part I of chapter 499.

91 3. Recovers, collects, screens, and tests, in the facility,  
92 adult human autologous nonembryonic HCT/Ps from a specific  
93 patient for implantation, transplantation, infusion, or transfer  
94 back into the same patient during a single surgery within the  
95 facility.

96 4. Provides patient-specific health care services using  
97 adult human autologous nonembryonic HCT/Ps in the facility  
98 during a single procedure.



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99           5. Advertises adult human nonembryonic stem cell services  
100 or adult human autologous nonembryonic HCT/P services,  
101 including, but not limited to, the collection, manufacture  
102 implantation, transplantation, infusion, transfer, storage,  
103 dispensing, use, or purported use of United States Food and Drug  
104 Administration-approved adult human autologous nonembryonic stem  
105 cells or adult human autologous nonembryonic HCT/Ps that are  
106 intended to diagnose, cure, mitigate, treat, provide therapy  
107 for, or prevent an injury or a disease.

108           6. Performs any procedure that is intended to:

109           a. Collect or store adult human autologous nonembryonic  
110 HCT/Ps for autonomous homologous use; or

111           b. Diagnose, cure, mitigate, treat, provide therapy for, or  
112 prevent an injury or a disease through the use or purported use  
113 of adult human autologous nonembryonic HCT/Ps.

114           7. Compounds patient-specific adult human autologous  
115 nonembryonic HCT/Ps into a drug product by combining or mixing  
116 the patient-specific adult human nonembryonic HCT/Ps, at the  
117 prescriptive direction of a licensed physician authorized within  
118 the scope of his or her license to prescribe and administer  
119 adult human autologous nonembryonic HCT/Ps with one or more  
120 drugs or products to create a patient-specific drug or product.

121           8. Dispenses adult human autologous nonembryonic stem cells  
122 or HCT/Ps to any of the following for a specific patient  
123 pursuant to a valid order from a licensed physician authorized  
124 within the scope of his or her license to prescribe and  
125 administer adult human autologous nonembryonic HCT/Ps:

126           a. The specific patient's physician with privileges to  
127 practice at the nonembryonic stem cell bank.



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128           b. For office use, the specific patient's physician's  
129 office or a health care facility or treatment setting where the  
130 physician has privileges to administer adult human autologous  
131 nonembryonic HTC/Ps.

132           (1) "Office use" includes the provision and administration  
133 of any United States Food and Drug Administration-approved adult  
134 human nonembryonic stem cell drug, compounded drug, or  
135 compounded product regulated as a drug, device, or any  
136 biological product under the FD&C Act, the PHS Act, 42 U.S.C.  
137 262, s. 351, or part I of chapter 499, to a patient's physician  
138 in the physician's office or in a health care facility or  
139 treatment setting, including a hospital, an ambulatory surgical  
140 center, or a health care clinic licensed under chapter 395 or  
141 chapter 400. The term also includes the patient-specific  
142 dispensing, provision, or administration of the patient's adult  
143 human autologous nonembryonic HTC/Ps.

144           (m) "PHS Act" means the Public Health and Safety Act, 42  
145 U.S.C. ss. 262 et seq., and applicable regulations, including 21  
146 C.F.R. part 1271.

147           (n) "Physician" means a person who is licensed to practice  
148 medicine under chapter 458 or osteopathic medicine under chapter  
149 459.

150           (2) DUTIES AND REGISTRATION.—

151           (a) Establishments that manufacture adult human  
152 nonembryonic HTC/Ps are regulated by s. 361 of the PHS Act and  
153 part I of chapter 499. Such establishments must register with  
154 and submit a list of all HCT/Ps manufactured to the Food and  
155 Drug Administration and obtain a permit from the Department of  
156 Business and Professional Regulation if the HCT/P manufactured



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157 is:  
158       1. Minimally manipulated;  
159       2. Intended only for homologous use;  
160       3. Manufactured through a process that does not involve the  
161 combination of the cells or tissue with another article, except  
162 water, crystalloids, or a sterilizing, preserving, or storing  
163 agent; and  
164       4. For an adult human nonembryonic HCT/P, either:  
165       a. Does not have a systemic effect and is not dependent  
166 upon the metabolic activity of living cells for their primary  
167 function; or  
168       b. Has a systemic effect or is dependent upon the metabolic  
169 activity of living cells for its primary function and is for  
170 autologous use or for allogenic use in a first-degree or second-  
171 degree blood relative.  
172       (b) Establishments that manufacture adult human  
173 nonembryonic HCT/Ps that do not meet the criteria described in  
174 paragraph (a) are exempt from the registration and listing  
175 requirements of s. 361 of the PHS Act, but must obtain a permit  
176 from and submit a list of all HTC/Ps manufactured to the  
177 Department of Business and Professional Regulation if the  
178 establishment:  
179       1. Uses the adult human nonembryonic HTC/Ps for  
180 nonmedicinal scientific purposes; or  
181       2. Removes human adult nonembryonic HCT/Ps from a patient  
182 and implants the same HCT/Ps into the same patient during the  
183 same surgical procedure with only minimal manipulation of the  
184 HCT/Ps which does not alter the original relevant biological  
185 characteristics of the cells or tissues.



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186       (c) A nonembryonic stem cell bank that manufactures adult  
187 human nonembryonic HCT/Ps may not more than minimally  
188 manipulate, through enzymatic digestion, mechanical disruption,  
189 or similar processing, any adult human nonembryonic stem cell or  
190 HCT/P to alter the HCT/P's original structural characteristics  
191 or relevant biological characteristics or to isolate  
192 differentiated cells from undifferentiated cells that have lost  
193 their original structural function, so that the undifferentiated  
194 cells can be differentiated into a specialized cell type, unless  
195 the nonembryonic stem cell bank has first registered the HCT/P  
196 with the United States Food and Drug Administration and the  
197 Department of Business and Professional Regulation as a drug,  
198 device, or biological product manufacturer and complies with all  
199 applicable regulations under the FD&C Act, s. 351 of the PHS  
200 Act, 21 C.F.R. parts 1-1299, and part I of chapter 499.

201       (d) A nonembryonic stem cell bank that advertises,  
202 collects, stores, manufactures, dispenses, compounds, uses, or  
203 purports to use adult human nonembryonic stem cells or adult  
204 human autologous nonembryonic HCT/Ps is deemed a clinic as  
205 defined in s. 400.9905 and must comply with all of the following  
206 requirements:

207       1. Adhere to the applicable current good manufacturing  
208 practices for the collecting, removing, manufacturing,  
209 processing, using, compounding, and implanting of adult human  
210 nonembryonic stem cells or products containing adult human  
211 nonembryonic stem cells pursuant to the FD&C Act, the PHS Act,  
212 21 C.F.R., parts 1270-1271, and part I of chapter 499.

213       2. Adhere to the applicable current good manufacturing  
214 practices for the collecting, removing, manufacturing,



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215 processing, using, compounding, and implanting of adult human  
216 autologous nonembryonic HCT/Ps so that it does not alter the  
217 relevant tissue or cellular characteristics or basic functions.

218 3. Obtain a health care clinic license from the agency  
219 pursuant to s. 400.991 and part II of chapter 408 and register  
220 each establishment separately, unless:

221 a. The clinic is a facility licensed under chapter 395; or

222 b. The clinic is affiliated with an accredited medical  
223 school that provides training to medical students, residents, or  
224 fellows.

225 4. Have a physician medical director who is responsible for  
226 the establishment's compliance with all requirements related to  
227 licensure, operation of a nonembryonic stem cell bank, and  
228 current good manufacturing practices under this section, part X  
229 of chapter 400, and the FD&C Act, the PHS Act, 21 C.F.R. parts  
230 1-1299, and part I of chapter 499.

231 5. Notify the agency, in writing, on a form approved by the  
232 agency, within 10 days after termination of a physician medical  
233 director and notify the agency within 10 days after such  
234 termination of the identity of the physician medical director  
235 who has assumed responsibility for that nonembryonic stem cell  
236 bank. Failure to have a physician medical director practicing at  
237 the location of the licensed nonembryonic stem cell bank is the  
238 basis for a summary suspension of the nonembryonic stem cell  
239 bank's license pursuant to s. 120.60(6) or s. 400.607.

240 6. Require a physician medical director with a full,  
241 active, and unencumbered license to actively practice at the  
242 nonembryonic stem cell bank location for which he or she has  
243 assumed responsibility.



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244 7. Maintain commercial and professional liability insurance  
245 in an amount not less than \$250,000 per claim.

246 8. Operate each establishment using the same name as the  
247 one used to obtain the health care clinic license from the  
248 agency. All invoices, packing slips, and other business records  
249 must list the same name.

250 9. Obtain a pharmacy permit for each person and  
251 establishment before dispensing, offering office use of, or  
252 compounding adult human nonembryonic stem cells with any other  
253 drug, compound, or product.

254 (3) DISPENSING OF DRUGS OR COMPOUNDED DRUGS OR PRODUCTS.-

255 (a) A pharmacist at a nonembryonic stem cell bank that is  
256 also permitted as a pharmacy under chapter 465 may dispense for  
257 office use only any of the following to a stem cell bank within  
258 this state:

259 1. Adult human nonembryonic stem cells.

260 2. A compounded drug containing adult human nonembryonic  
261 stem cells.

262 3. A compounded product containing adult human nonembryonic  
263 stem cells.

264 (b) Adult human nonembryonic stem cells, compounded drugs  
265 containing adult human nonembryonic stem cells, or products  
266 containing adult human nonembryonic stem cells may not be sold  
267 or dispensed by any person or establishment other than the adult  
268 human nonembryonic stem cell bank or a pharmacist at the  
269 nonembryonic stem cell bank that dispenses or receives the adult  
270 human nonembryonic stem cells or the compounded drug or product  
271 containing adult human nonembryonic stem cells, except that:

272 1. A physician who requests the dispensing of adult human



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273 nonembryonic stem cells, a compounded drug, or a compounded  
274 product from the manufacturing nonembryonic stem cell bank may  
275 administer such items to his or her patient if the physician is  
276 authorized within the scope of his or her license to prescribe  
277 and administer adult human nonembryonic stem cells; or

278 2. A pharmacist, a pharmacy, or an establishment that  
279 receives or carries adult human nonembryonic stem cells, a  
280 compounded drug, or a compounded product that was manufactured  
281 by a nonembryonic stem cell bank may sell or dispense such items  
282 to a physician who is authorized within the scope of his or her  
283 license to prescribe and administer adult human nonembryonic  
284 stem cells to patients.

285 (4) HEALTH CARE PRACTITIONER RESPONSIBILITIES.-

286 (a) A physician, an advanced practice registered nurse  
287 licensed under chapter 464, or a physician assistant licensed  
288 under chapter 458 or chapter 459 may not practice in a  
289 nonembryonic stem cell bank that is not licensed with the agency  
290 as required by the rules adopted pursuant to s. 400.9925. The  
291 license of a health care practitioner who violates this  
292 paragraph is subject to disciplinary action by the appropriate  
293 regulatory board.

294 (b) In the performance of any procedure collecting,  
295 storing, using, or purporting to use adult human nonembryonic  
296 stem cells or products containing adult human nonembryonic stem  
297 cells, a health care practitioner must adhere to the applicable  
298 current good manufacturing practices for the collecting,  
299 removing, manufacturing, processing, using, compounding, and  
300 implanting of stem cells or products containing stem cells  
301 pursuant to the FD&C Act, 21 C.F.R., parts 1270-1271, the PHS



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302 Act, and part I of chapter 499.

303 (5) RULEMAKING.—The agency, in consultation with the  
304 Department of Health and the Department of Business and  
305 Professional Regulation, shall adopt rules necessary to  
306 administer the licensure, inspection, and regulation of  
307 nonembryonic stem cell banks, including, but not limited to,  
308 rules regarding all of the following which must be consistent  
309 with the best practices specified in the FD&C Act, 21 C.F.R.  
310 parts 1270-1271, the PHS Act, and part I of chapter 499:

311 (a) Advertising.

312 (b) Nonembryonic stem cell bank procedures and protocols  
313 for the collecting, removing, manufacturing, storing,  
314 dispensing, and using of adult human nonembryonic stem cells,  
315 other drugs containing adult human nonembryonic stem cells, and  
316 products containing adult human nonembryonic stem cells, in  
317 accordance with applicable current best practices.

318 (c) Adverse incident reporting.

319 (d) Informed consent.

320 (e) Recordkeeping, record retention, and availability of  
321 records for inspection.

322 Section 2. This act shall take effect July 1, 2020.

323

324 ===== T I T L E A M E N D M E N T =====

325 And the title is amended as follows:

326 Delete everything before the enacting clause  
327 and insert:

328 A bill to be entitled

329 An act relating to nonembryonic stem cell banks;

330 creating s. 381.06017, F.S.; defining terms; providing



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331 registration requirements for certain establishments;  
332 prohibiting a nonembryonic stem cell bank from more  
333 than minimally manipulating adult human nonembryonic  
334 stem cells or HCT/Ps under certain circumstances;  
335 providing that a nonembryonic stem cell bank that  
336 performs certain functions is deemed a clinic;  
337 requiring such nonembryonic stem cell banks to comply  
338 with specified requirements; prohibiting an entity  
339 other than certain nonembryonic stem cell banks and  
340 pharmacists from dispensing certain compounded drugs  
341 or products, with exceptions; prohibiting certain  
342 health care practitioners from practicing in a  
343 nonembryonic stem cell bank that is not licensed with  
344 the agency; providing for disciplinary action;  
345 requiring health care practitioners to adhere to  
346 specified regulations in the performance of certain  
347 procedures; requiring the Agency, in consultation with  
348 the Department of Health and the Department of  
349 Business and Professional Regulation, to adopt  
350 specified rules; providing an effective date.

By the Committees on Appropriations; and Health Policy; and  
Senator Hutson

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A bill to be entitled

An act relating to nonembryonic stem cell banks;  
creating s. 381.06017, F.S.; defining terms; providing  
that a nonembryonic stem cell bank that performs  
certain functions is deemed a clinic; requiring such  
nonembryonic stem cell banks to comply with specified  
requirements; prohibiting an entity other than certain  
nonembryonic stem cell banks and pharmacists from  
dispensing certain compounded drugs or products, with  
exceptions; prohibiting certain health care  
practitioners from practicing in a nonembryonic stem  
cell bank that is not licensed with the agency;  
providing for disciplinary action; requiring health  
care practitioners to adhere to specified regulations  
in the performance of certain procedures; requiring  
the agency to adopt specified rules; providing a  
contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 381.06017, Florida Statutes, is created  
to read:

381.06017 Nonembryonic stem cell banks; collection,  
manufacturing, storage, dispensing, and use of human  
nonembryonic stem cells.-

(1) DEFINITIONS.—As used in this section, the term:

(a) "Compounding" means combining, mixing, or altering the  
ingredients of one or more drugs or products to create another  
drug or product.

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(b) "Dispense" has the same meaning as in s. 465.003(6).

(c) "Establishment" means a place of business which is at  
one general physical location and may extend to one or more  
contiguous suites, units, floors, or buildings operated and  
controlled exclusively by entities under common operation and  
control. The term includes multiple buildings with an  
intervening thoroughfare if the buildings are under common  
exclusive ownership, operation, and control. For purposes of  
permitting, each suite, unit, floor, or building must be  
identified in the most recent permit application.

(d) "Federal act" means the Federal Food, Drug, and  
Cosmetic Act, 21 U.S.C. ss. 301 et seq.; 52 Stat. 1040 et seq.

(e) "Minimally manipulated" means:

1. For structural tissue, processing that does not alter  
the original characteristics of the tissue which relate to the  
tissue's utility for reconstruction, repair, or replacement; or  
2. For cells or nonstructural tissue, processing that does  
not alter the relevant biological characteristics of the cell or  
tissue.

(f) "Nonembryonic stem cell," also referred to as a  
"somatic stem cell" or an "adult human stem cell," means an  
allogenic or autologous cell that is undifferentiated and  
unspecialized and that has the ability to divide for indefinite  
periods of time in a medium and to become a specialized cell.  
The term includes a human nonembryonic cell that is altered or  
processed to become undifferentiated, losing its original  
structural function, so that it can be differentiated into a  
specialized cell type. The term does not include cells that are  
minimally manipulated or are only rinsed, cleaned, or sized and

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59 remain differentiated.

60 (g) "Nonembryonic stem cell bank" means a publicly or  
 61 privately owned establishment that does any of the following:

62 1. Collects and stores human nonembryonic stem cells for  
 63 use in a product or patient-specific medical administration.

64 2. Provides patient-specific health care services using  
 65 human nonembryonic stem cells.

66 3. Advertises human nonembryonic stem cell services,  
 67 including, but not limited to, collection, manufacturing,  
 68 storage, dispensing, use, or purported use of human nonembryonic  
 69 stem cells or products containing human nonembryonic stem cells,  
 70 which have not been approved by the United States Food and Drug  
 71 Administration or are not the subject of clinical trials  
 72 approved by the United States Food and Drug Administration and  
 73 which are intended to diagnose, cure, mitigate, treat, provide  
 74 therapy for, or prevent an injury or a disease.

75 4. Performs any procedure that is intended to:

76 a. Collect or store human nonembryonic stem cells for any  
 77 purpose; or

78 b. Diagnose, cure, mitigate, treat, provide therapy for, or  
 79 prevent an injury or a disease with the use or purported use of  
 80 human nonembryonic stem cells or any product containing human  
 81 nonembryonic stem cells which has not been approved by the  
 82 United States Food and Drug Administration or is not the subject  
 83 of a clinical trial approved by the United States Food and Drug  
 84 Administration.

85 5. Compounds human nonembryonic stem cells from human  
 86 nonembryonic cells or tissue into products by combining, mixing,  
 87 or altering the ingredients of one or more drugs or products to

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88 create another drug or product.

89 6. Manufactures, through recovery, processing,  
 90 manipulation, enzymatic digestion, mechanical disruption, or a  
 91 similar process, human nonembryonic stem cells from human  
 92 nonembryonic cells or tissue into undifferentiated human  
 93 nonembryonic stem cells, causing the cells to lose their  
 94 original structural function so that the nonembryonic stem cells  
 95 may be differentiated into specialized cell types.

96 7. Dispenses human nonembryonic stem cells and products  
 97 containing nonembryonic stem cells to any of the following for a  
 98 specific patient pursuant to a valid prescription from a  
 99 licensed health care practitioner authorized within the scope of  
 100 his or her license to prescribe and administer human  
 101 nonembryonic stem cells:

102 a. A pharmacy permitted under chapter 465.

103 b. A health care practitioner with privileges to practice  
 104 at nonembryonic stem cell banks.

105 c. A health care practitioner's office, a health care  
 106 facility, or a treatment setting where the health care  
 107 practitioner has privileges to practice, for office use.

108 (h) "Office use" means the provision and administration of  
 109 a drug, compounded drug, or compounded product to a patient by a  
 110 health care practitioner in the practitioner's office or in a  
 111 health care facility or treatment setting, including a hospital,  
 112 ambulatory surgery center, or health care clinic licensed under  
 113 chapter 395 or chapter 400. The term also includes the  
 114 dispensing by a pharmacist at a nonembryonic stem cell bank that  
 115 is also permitted as a pharmacy under chapter 465 to a  
 116 nonembryonic stem cell bank within this state of any of the

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117 following:118 1. Human nonembryonic stem cells.119 2. A compounded drug containing human nonembryonic stem  
120 cells.121 3. A compounded product containing nonembryonic stem cells.122 (2) DUTIES AND REGISTRATION.—A nonembryonic stem cell bank  
123 that advertises, collects, stores, manufactures, dispenses,  
124 compounds, uses, or purports to use nonembryonic stem cells or  
125 products containing nonembryonic stem cells is deemed a clinic  
126 as defined in s. 400.9905 and must comply with all of the  
127 following requirements:128 (a) Adhere to the applicable current good manufacturing  
129 practices for the collection, removal, manufacturing,  
130 processing, compounding, and implantation of nonembryonic stem  
131 cells or products containing nonembryonic stem cells pursuant to  
132 the federal act and 21 C.F.R., parts 1270-1271.133 (b) Obtain a health care clinic license from the agency  
134 pursuant to s. 400.991 and part II of chapter 408 and register  
135 each establishment separately, unless:136 1. The clinic is a facility licensed under chapter 395; or  
137 2. The clinic is affiliated with an accredited medical  
138 school that provides training to medical students, residents, or  
139 fellows.140 (c) Have a physician medical director who is responsible  
141 for complying with all requirements related to licensure,  
142 operation of a nonembryonic stem cell bank, and good  
143 manufacturing practices under this section, part X of chapter  
144 400, and the federal act and 21 C.F.R., parts 1270-1271.145 (d) Notify the agency in writing on a form approved by the

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146 agency within 10 days after termination of a physician medical  
147 director and notify the agency within 10 days after such  
148 termination of the identity of the physician medical director  
149 who has assumed responsibility for that nonembryonic stem cell  
150 bank. Failure to have a physician medical director practicing at  
151 the location of the licensed nonembryonic stem cell bank shall  
152 be the basis for a summary suspension of the nonembryonic stem  
153 cell bank's license pursuant to s. 400.607 or s. 120.60(6).154 (e) Require a physician medical director to have a full,  
155 active, and unencumbered license issued under chapter 458 or  
156 chapter 459 and to actively practice at the nonembryonic stem  
157 cell bank location for which he or she has assumed  
158 responsibility.159 (f) Maintain commercial and professional liability  
160 insurance in an amount not less than \$250,000 per claim.161 (g) Operate each establishment using the same name as the  
162 one used to obtain the health care clinic license from the  
163 agency. All invoices, packing slips, and other business records  
164 must list the same name.165 (h) Obtain a pharmacy permit for each person and  
166 establishment before dispensing, offering office use for the  
167 compounding of human nonembryonic stem cells, or dispensing a  
168 compounded product for office use.169 (3) DISPENSING OF DRUGS OR COMPOUNDED DRUGS OR PRODUCTS.—170 (a) A pharmacist at a nonembryonic stem cell bank that is  
171 also permitted as a pharmacy under chapter 465 may dispense any  
172 of the following to a stem cell bank within the state, for  
173 office use:174 1. Human nonembryonic stem cells;

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175 2. A compounded drug containing human nonembryonic stem  
 176 cells; or

177 3. A compounded product containing human nonembryonic stem  
 178 cells.

179 (b) Human nonembryonic stem cells, compounded drugs  
 180 containing human nonembryonic stem cells, or products containing  
 181 human nonembryonic stem cells may not be sold or dispensed by  
 182 any person or establishment other than the nonembryonic stem  
 183 cell bank or pharmacist at the nonembryonic stem cell bank that  
 184 manufactured the human nonembryonic stem cells or the compounded  
 185 drug or product containing human nonembryonic stem cells, except  
 186 that:

187 1. A health care practitioner who requests the dispensing  
 188 of the human nonembryonic stem cells, compounded drug, or  
 189 compounded product from the manufacturing nonembryonic stem cell  
 190 bank may sell or dispense such items to his or her patient if  
 191 the health care practitioner is authorized within the scope of  
 192 his or her license to prescribe and administer human  
 193 nonembryonic stem cells; or

194 2. A pharmacist, pharmacy, or establishment that requests  
 195 the dispensing of the human nonembryonic stem cells, compounded  
 196 drug, or compounded product from the manufacturing nonembryonic  
 197 stem cell bank may sell or dispense such items to a health care  
 198 practitioner who is authorized within the scope of his or her  
 199 license to prescribe and administer human nonembryonic stem  
 200 cells to patients.

201 (4) HEALTH CARE PRACTITIONER RESPONSIBILITIES.—

202 (a) A physician licensed under chapter 458 or chapter 459,  
 203 an advanced practice registered nurse licensed under chapter

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204 464, or a physician assistant licensed under chapter 458 or  
 205 chapter 459 may not practice in a nonembryonic stem cell bank  
 206 that is not licensed with the agency as required by the rules  
 207 adopted pursuant to s. 400.9925. The license of a health care  
 208 practitioner who violates this paragraph is subject to  
 209 disciplinary action by the appropriate regulatory board.

210 (b) In the performance of any procedure collecting,  
 211 storing, using, or purporting to use nonembryonic stem cells or  
 212 products containing nonembryonic stem cells, a health care  
 213 practitioner must adhere to the applicable current good  
 214 manufacturing practices for the collection, removal,  
 215 manufacturing, processing, compounding, and implantation of stem  
 216 cells or products containing stem cells pursuant to the federal  
 217 act and 21 C.F.R., parts 1270-1271.

218 (5) RULEMAKING.—The agency shall adopt rules necessary to  
 219 administer the licensure and regulation of nonembryonic stem  
 220 cell banks, including, but not limited to, rules regarding all  
 221 of the following, which must be consistent with the best  
 222 practices specified in the federal act and 21 C.F.R., parts  
 223 1270-1271:

224 (a) Advertising.

225 (b) Nonembryonic stem cell bank procedures and protocols  
 226 for the collection, manufacturing, storing, dispensing, and use  
 227 of nonembryonic stem cells, drugs containing nonembryonic stem  
 228 cells, and products containing nonembryonic stem cells in  
 229 accordance with the applicable current best practices.

230 (c) Adverse incident reporting.

231 (d) Informed consent.

232 (e) Recordkeeping, record retention, and availability of

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233 records for inspection.

234 Section 2. This act shall take effect July 1, 2020,  
235 contingent on SB 7066 or similar legislation taking effect on  
236 that same date, if such legislation is adopted in the same  
237 legislative session or an extension thereof and becomes a law.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 20, 2020

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I respectfully request that **Senate Bill #512**, relating to Nonembryonic Stem Cells, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script, reading "Travis Hutson".

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Senator Travis Hutson  
Florida Senate, District 7

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 680

INTRODUCER: Commerce and Tourism Committee; Environment and Natural Resources Committee;  
and Senator Hutson, and others

SUBJECT: Shark Fins

DATE: February 24, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dyson</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	<u>Dyson</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 680 prohibits the sale of shark fins in Florida, and the import and export of shark fins to and from Florida. However, the prohibition on sale and export does not apply to commercial fishermen who hold a valid federal shark fishing permit on January 1, 2020, or to seafood dealers who harvest and possess sharks, shark fins, and associated shark products that are legally landed, handled, processed, and transported. This exception expires on January 1, 2025.

The bill takes effect on October 1, 2020.

**II. Present Situation:**

Pursuant to Article IV, s. 9 of the Florida Constitution, the Florida Fish and Wildlife Conservation Commission exercises the regulatory and executive powers with respect to marine life, including sharks.<sup>1</sup> Florida's shark population is diverse and includes species that range in size from only a few feet to more than 40 feet in total length.<sup>2</sup> Most species of sharks have slow

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<sup>1</sup> FLA. CONST. ART. IV, S. 9.

<sup>2</sup> University of Florida's Institute of Food and Agricultural Sciences (IFAS), *Common Sharks in Florida*, SGEF-203, available at <http://edis.ifas.ufl.edu/pdffiles/SG/SG06200.pdf> (last visited Feb. 18, 2020).

rates of growth and late age-at-maturity, which limits their ability to withstand fishing pressure and means they have a longer recovery time in response to overfishing.<sup>3</sup>

Global shark catches have tripled since 1950 and reached an all-time high of 888,000 tons in 2000.<sup>4</sup> Because overfishing in some areas of the world's oceans has led to concerns for the populations of some shark species, adequate conservation and management of shark populations has become increasingly important on a global scale.<sup>5</sup> In response to concerns about growing shark harvests internationally, many countries have banned shark fishing in their waters in favor of promoting tourism opportunities relating to sharks.<sup>6</sup>

### **Harvesting Sharks off Florida's Coast**

Fishermen harvest sharks primarily for their meat, fins, skin, cartilage, and liver.<sup>7</sup> Meat from some species of shark is an important dietary component in many developing countries, and shark fins, the most valuable of shark products, are used to make traditional shark fin soup, which is a delicacy in the Chinese culture.<sup>8</sup> However, despite the high value of some shark products, sharks historically have been considered a low-value fish and mostly seen as a by-product of other more profitable fisheries, such as tuna.<sup>9</sup>

Within Florida's seaward boundary, the use of hook and line gear is the only lawful means to harvest sharks in or from the waters of the state.<sup>10</sup> A person may not harvest in or from the waters of the state more than one shark per day.<sup>11</sup> The possession of more than two sharks harvested from the state waters aboard any vessel with two or more persons is prohibited.<sup>12</sup> While certain species of shark, including any part of these species, are prohibited under state law from being harvested, possessed, landed, purchased, sold, or exchanged in the state, the prohibition does not apply to sharks harvested lawfully in federal waters when the shark is transported directly through state waters.<sup>13</sup>

To commercially harvest sharks, an individual must possess both a valid saltwater products license and any applicable federal permit for sharks.<sup>14</sup> The commercial harvest season

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<sup>3</sup> United Nations Food and Agriculture Organization of the United Nations (FAO), *International Plan of Action for Conservation and Management of Sharks*, available at <http://www.fao.org/ipoa-sharks/background/sharks/en/> (last visited Feb. 18, 2020).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> National Oceanic and Atmospheric Administration (NOAA), 2017 *Shark Finning Report to Congress*, 3 (2017), available at <https://www.fisheries.noaa.gov/resource/document/2017-shark-finning-report-congress> (last visited Feb. 18, 2020).

<sup>7</sup> NOAA, 2015 *Shark Finning Report to Congress*, 2, 6, 78, 93 (2015) available at <https://repository.library.noaa.gov/view/noaa/15645> (last visited Feb. 18, 2020).

<sup>8</sup> Smithsonian National Museum of Natural History, *Sharking Finning: Sharks Turned Prey*, available at <https://ocean.si.edu/ocean-news/shark-finning-sharks-turned-prey> (last visited Feb. 18, 2020).

<sup>9</sup> Frans Teutscher, FAO, *Sharks (Chondrichthyes)*, available at <http://www.fao.org/docrep/006/Y5261E/y5261e08.htm> (last visited Feb. 18, 2020).

<sup>10</sup> Fla. Admin. Code R. 68B-44.006(1); Florida's seaward boundary extends 9 nautical miles in the Gulf of Mexico and 3 nautical miles in the Atlantic.

<sup>11</sup> Fla. Admin. Code R. 68B-44.004(1).

<sup>12</sup> *Id.*

<sup>13</sup> Fla. Admin. Code R. 68B-44.003(4).

<sup>14</sup> Fla. Admin. Code R. 68B-44.009.

technically spans the entire year, but can be closed if any adjacent federal waters are closed. Additionally, if the Atlantic Marine fisheries commission deems the need for closure, all waters between the Florida–Georgia border and Miami-Dade county will also be closed to commercial harvesting.<sup>15</sup>

**Shark Finning**

Shark finning is the practice of removing and retaining shark fins at sea while discarding the remainder of the shark’s body, often while the shark is still alive, into the waters. In Florida, the practice of shark finning was prohibited in 1992 by requiring sharks harvested to be landed in a whole condition.<sup>16</sup> Additionally, the prohibition on shark finning was codified into Florida Statutes in 2017.<sup>17</sup> The statute prohibits the possession of a shark fin separated from the shark in Florida waters unless such possession is authorized by FWC or the fin was legally obtained on land, was prepared by taxidermy, and is possessed for the purposes of display.<sup>18</sup>

An individual who violates the prohibition is subject to the following penalties:

Violations	Type of Criminal Infraction	Civil Penalty and Jail Time	License Restrictions	Administrative Fines
1 <sup>st</sup> offense <sup>19</sup>	2 <sup>nd</sup> Degree Misdemeanor	Max: \$500 <sup>20</sup> Max: 60 days <sup>21</sup>	Suspension of license for 180 days	\$4,500
2 <sup>nd</sup> offense <sup>22</sup>	2 <sup>nd</sup> Degree Misdemeanor	Max \$500 <sup>23</sup> Max: 60 days <sup>24</sup>	Suspension of license for 365 days	\$9,500
3 <sup>rd</sup> offense and subsequent offenses <sup>25</sup>	1 <sup>st</sup> Degree Misdemeanor	Max: \$1,000 <sup>26</sup> Max: 1 year <sup>27</sup>	Permanent revocation of all license privileges	\$9,500

In the United States, shark finning was prohibited in 2000.<sup>28</sup> In 2010, the Shark Conservation Act strengthened the prohibition by improving the ability to enforce the shark finning prohibition by making it unlawful to:

- Remove any fins of a shark, including the tail, at sea;
- Have custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;

<sup>15</sup> Fla. Admin. Code R. 68B-44.005.

<sup>16</sup> Fla. Admin. Code R. 68B-44.004.

<sup>17</sup> Section 379.2426(2), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Section 379.2426(3)(a), F.S.

<sup>20</sup> Section 775.083(1)(e), F.S.

<sup>21</sup> Section 775.082(4)(b), F.S.

<sup>22</sup> Section 379.2426(3)(b), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> Section 775.082(4)(b), F.S.

<sup>25</sup> Section 379.2426(3)(c), F.S.

<sup>26</sup> Section 775.083(1)(d), F.S.

<sup>27</sup> Section 775.082(4)(a), F.S.

<sup>28</sup> 16 U.S.C. s. 1857 (2000).

- Transfer any such fin from one vessel to another vessel at sea; or
- Land any such fin that is not naturally attached to the corresponding carcass or land any shark carcass without such fins naturally attached.<sup>29</sup>

A person who violates these federal laws may be subject to a civil penalty of up to \$100,000 for each violation, as determined by the U.S. Secretary of Commerce.<sup>30</sup>

While the practice of shark finning is prohibited in the United States, the trade of shark fins is legal. In 2011, the last year that full global data is available, the total declared value of world exports was \$438.6 million for 17,154 tons imported.<sup>31</sup> The United States is both an importer and exporter of shark fins.<sup>32</sup> In 2011, the U.S. exported 38 tons of shark fins and imported 58 tons.<sup>33</sup> A number of the countries that the U.S. imports shark fins from do not have a ban in place, such as China, Indonesia, and Japan. In response, some U.S. states have passed laws to ban the trade of shark fins, such states include Hawaii, California, Oregon, Washington, Illinois, Maryland, Delaware, Nevada, New York, Massachusetts, Rhode Island, and Texas.<sup>34</sup>

Many other countries have also banned shark fishing in their waters. Nations that have adopted finning bans include the Bahamas, Belize, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, the Maldives, Nicaragua, Palau, Panama, and Taiwan.<sup>35</sup> Additionally, Canada, the largest importer of shark fins outside of Asia, banned the importation and exportation of shark fins in June of 2019.<sup>36</sup>

California's ban on the trade of shark fins was challenged in federal court. On appeal, the plaintiffs alleged that the ban violated the Supremacy Clause under Art. VI of the U.S. Constitution and the Commerce Clause under Art. I, s. 8 of the U.S. Constitution.<sup>37</sup> The 9<sup>th</sup> Circuit Court of Appeals held that states are authorized to regulate "on-land activities," as the Magnuson-Stevens Fishery Conservation and Management Act was enacted as a federal-state partnership and expressly preserved the jurisdiction of the states over fishery management within their boundaries.<sup>38</sup> Additionally, the court held that the ban did not violate the Commerce Clause as it does not "interfere with activity that is inherently national or that requires a uniform system of regulation," and its purpose is to "conserve state resources, prevent animal cruelty, and protect wildlife and public health," purposes which are matters of local concern.<sup>39</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> 16 U.S.C. s. 1858 (2014).

<sup>31</sup> FAO, *State of the global market for shark products*, 1 (2015), available at <http://www.fao.org/3/a-i4795e.pdf> (last visited Feb. 18, 2020).

<sup>32</sup> *Id.* at 85.

<sup>33</sup> *Id.* at 19, 21.

<sup>34</sup> See HAW. REV. STAT. § 188-40.7; CAL. FISH & GAME § 2021; OR. REV. STAT. § 509.160; WASH. REV. CODE § 77.15.770; 515 ILL. COMP. STAT. 5/5-30; MD CODE ANN., NAT. RES. § 4-747; DEL. CODE TIT. 7, § 928A; NEV. REV. STAT. § 597.905; N.Y. ENVTL. CONSERV. LAW § 13-0338; MASS. GEN. LAWS ch. 130, § 106; R.I. GEN LAWS §20-1-29; and TEX. PARKS & WILD. CODE § 66.2161.

<sup>35</sup> NOAA, *2017 Shark Finning Report to Congress*, available at <https://repository.library.noaa.gov/view/noaa/19769> (last visited Feb. 17, 2020).

<sup>36</sup> Fisheries Act, S.C. ch. 18.1 §32(1).

<sup>37</sup> *Chinatown Neighborhood Ass'n. v. Harris*, 794 F.3d 1136 (9th Cir. 2015), *cert. denied*, 136 S.Ct. 2448 (2016).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

**III. Effect of Proposed Changes:**

The bill prohibits the sale of shark fins in Florida, and the import and export of shark fins to and from Florida. However, the prohibition on sale and export does not apply to commercial fishermen who hold a valid federal shark fishing permit on January 1, 2020, or to seafood dealers who harvest and possess sharks, shark fins, and associated shark products that are legally landed, handled, processed, and transported. This exception expires on January 1, 2025.

The bill takes effect on October 1, 2020.

**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 Commerce Clause of the United States Constitution states that the United States Congress has the power to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes.<sup>40</sup> If an exercise of local power serves a legitimate local interest but simultaneously burdens commerce, the courts will undertake a balancing test.<sup>41</sup> California's shark ban was challenged in the 9<sup>th</sup> Circuit Court of Appeals, and the court held that the shark ban does not violate the Commerce Clause.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

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<sup>40</sup> U.S. CONST. art. I, s. 8.

<sup>41</sup> *Great Atlantic & Pac. Tea Co., Inc. v. Cottrell*, 424 U.S. 366 (1976).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 379.2426 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 Commerce and Tourism on February 18, 2020:**

- Provides an exception to the sale and export prohibition by establishing that the prohibition does not apply to commercial fishermen who hold a valid federal shark fishing permit on January 1, 2020, or to seafood dealers who harvest and possess sharks, shark fins, and associated shark products that are legally landed, handled, processed, and transported. This exception expires on January 1, 2025.

**CS by Environment and Natural Resources on February 3, 2020:**

- Changes the bill to prohibit importing and exporting shark fins to and from Florida.
- Changes the statute's title to read "Regulation of shark fins; penalties."

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Hutson) recommended the following:

**Senate Amendment**

Delete line 37

and insert:

fisherman who harvested sharks from a vessel that has been  
issued a valid federal shark fishing permit on or before



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 68 and 69

insert:

Section 2. The Office of Program Policy Analysis and Government Accountability (OPPAGA) shall conduct a study to determine the potential economic impacts to the commercial shark fishing industry in this state and the potential environmental impacts to our oceans due to such industry, including the positive or negative impact to our oceans if the fishing and sale of shark fins in this state and the export of shark fins



12 from this state are prohibited. In conducting the study, OPPAGA  
13 shall consult with the National Oceanic and Atmospheric  
14 Administration, Mote Marine Laboratory, the Fish and Wildlife  
15 Conservation Commission, any other interested entities, and  
16 commercial fishermen, and such study may consider any relevant  
17 information necessary. If the office determines that there is a  
18 negative economic or environmental impact to the commercial  
19 shark fishing industry in this state or to the oceans  
20 themselves, respectively, the office must consider potential  
21 actions that this state may take to lessen or offset such  
22 impacts to the extent practicable. OPPAGA shall submit a report  
23 of its findings to the President of the Senate and the Speaker  
24 of the House of Representatives by October 1, 2021.

25  
26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 Delete line 6

29 and insert:

30 applicability; requiring the Office of Program Policy  
31 Analysis and Government Accountability to conduct a  
32 study on the economic and environmental impacts of the  
33 commercial shark fishing industry in this state;  
34 requiring the office to consult with specified  
35 entities in conducting the study; requiring the office  
36 to consider offsets to certain potential negative  
37 impacts if necessary; requiring a report to the  
38 Legislature by a specified date; providing an  
39 effective date.

By the Committees on Commerce and Tourism; and Environment and Natural Resources; and Senators Hutson, Gruters, Stewart, Berman, and Book

577-03840-20

2020680c2

1 A bill to be entitled  
 2 An act relating to shark fins; amending s. 379.2426,  
 3 F.S.; prohibiting the import of shark fins to this  
 4 state; prohibiting the sale of shark fins within or  
 5 the export of shark fins from this state; providing  
 6 applicability; providing an effective date.  
 7  
 8 Be It Enacted by the Legislature of the State of Florida:  
 9  
 10 Section 1. Section 379.2426, Florida Statutes, is amended  
 11 to read:  
 12 379.2426 Regulation Possession of separated shark fins on  
 13 the water prohibited; penalties.-  
 14 (1) As used in this section, the term:  
 15 (a) "Land" means the physical act of bringing a harvested  
 16 organism, or any part thereof, ashore.  
 17 (b) "Shark" means any species of the orders  
 18 *Carcharhiniformes, Lamniformes, Hexanchiformes,*  
 19 *Orectolobiformes, Pristiophoriformes, Squaliformes,*  
 20 *Squatiniformes,* or any part thereof.  
 21 (c) "Shark fin" means the detached fin of a shark,  
 22 including the caudal or tail fin, or any portion thereof.  
 23 (d) "Separated," with respect to a shark fin, means not  
 24 naturally attached to the corresponding shark body through some  
 25 portion of uncut skin.  
 26 (2) A person may not possess in or on the waters of this  
 27 state a shark fin that has been separated from a shark or land a  
 28 separated shark fin in this state, unless:  
 29 (a) Such possession is authorized by commission rule; or

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30 (b) Such fin has been lawfully obtained on land, prepared  
 31 by taxidermy, and is possessed for the purposes of display.  
 32 (3) The import of shark fins to this state is prohibited.  
 33 (4) (a) Except as provided under paragraph (b), the sale of  
 34 shark fins in this state and the export of shark fins from this  
 35 state are prohibited.  
 36 (b) This subsection does not apply to any commercial  
 37 fisherman who holds a valid federal shark fishing permit on  
 38 January 1, 2020, or to seafood dealers who harvest and possess  
 39 sharks, shark fins, and associated shark products that are  
 40 legally landed, handled, processed, and transported. This  
 41 paragraph expires on January 1, 2025.  
 42 (5) (3) A person who violates this section is subject to the  
 43 following penalties:  
 44 (a) For a first violation, a misdemeanor of the second  
 45 degree, punishable as provided in s. 775.082 or s. 775.083. In  
 46 addition, the commission shall assess an administrative fine of  
 47 \$4,500 and suspend all of the person's license privileges under  
 48 this chapter for 180 days.  
 49 (b) For a second violation, a misdemeanor of the second  
 50 degree, punishable as provided in s. 775.082 or s. 775.083. In  
 51 addition, the commission shall assess an administrative fine of  
 52 \$9,500 and suspend all of the person's license privileges under  
 53 this chapter for 365 days.  
 54 (c) For a third and any subsequent violation, a misdemeanor  
 55 of the first degree, punishable as provided in s. 775.082 or s.  
 56 775.083. In addition, the commission shall assess an  
 57 administrative fine of \$9,500 and permanently revoke all of the  
 58 person's license privileges under this chapter.

Page 2 of 3

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While his or her license privileges are under suspension or revocation pursuant to this subsection, a person may not participate in the taking or harvesting, or attempt the taking or harvesting, of saltwater products from any vessel within the waters of the state; be aboard any vessel on which a commercial quantity of saltwater products is possessed through an activity requiring a license pursuant to this chapter; or engage in any other activity requiring a license, permit, or certificate issued pursuant to this chapter.

Section 2. This act shall take effect October 1, 2020.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 20, 2020

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I respectfully request that **Senate Bill #680**, relating to Shark Fins, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script, reading "Travis Hutson".

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Senator Travis Hutson  
Florida Senate, District 7

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 708

INTRODUCER: Rules Committee; Health Policy Committee; and Senator Hutson

SUBJECT: Automated Pharmacy Systems

DATE: February 27, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	<b>Fav/CS</b>
2.	Kraemer	Imhof	IT	<b>Favorable</b>
3.	Rossitto-Van Winkle	Phelps	RC	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 708 amends s. 465.0235, F.S., to permit a licensed community pharmacy to provide outpatient pharmacy services for the dispensing of medicinal drugs through the use of an automated pharmacy system (APS) located outside the community pharmacy if:

- The APS is under the supervision and control of the community pharmacy;
- The APS is located in an indoor environment area that increases patients' access to medicinal prescriptions, including, but not limited to:
  - Medical facilities;
  - Places of business where essential goods and commodities are sold;
  - Rural areas of the state;
  - Large employer workplaces; and
  - Locations where access to a community pharmacy is limited.
- The Board of Pharmacy (board) is notified of all locations of APSs, and any change;
- The APS has a mechanism that provides live, real-time patient counseling by a pharmacist;
- The APS does not contain any controlled substances;
- The community pharmacy maintains records of the drugs dispensed including specific information;
- The APS ensures confidentiality of personal health information; and
- The community pharmacy maintains written policies and procedures to ensure the proper, safe, and secure functioning of the APS.

The bill authorizes, rather than requires as under current law, the board to adopt rules governing a community pharmacy's use of an APS.

The bill provides an effective date of July 1, 2020.

## II. Present Situation:

### The Practice of Pharmacy

Pharmacy is the third largest health profession behind nursing and medicine.<sup>1</sup> The Board of Pharmacy (BOP), in conjunction with the Department of Health (DOH), regulates the practice of pharmacists and pharmacies pursuant to ch. 465, F.S.<sup>2</sup> There are seven types of pharmacies eligible for various operating permits issued by the DOH:

- Community pharmacy;
- Institutional pharmacy;<sup>3</sup>
- Nuclear pharmacy;<sup>4</sup>
- Special pharmacy;<sup>5</sup>
- Internet pharmacy;<sup>6</sup>
- Non-resident sterile compounding pharmacy;<sup>7</sup> and
- Special sterile compounding pharmacy.<sup>8</sup>

### Community 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.<sup>9</sup> A community pharmacy permit is required for every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.<sup>10</sup> Any person desiring a permit to operate a community pharmacy must

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<sup>1</sup> American Association of Colleges of Pharmacy, *About AACP*, available at <https://www.aacp.org/about-aacp> (last visited Jan. 25, 2020).

<sup>2</sup> Sections 465.004 and 465.005, F.S.

<sup>3</sup> See ss. 465.003(11)(a)2. and 465.019, F.S.

<sup>4</sup> The term “nuclear pharmacy” includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold. The term “nuclear pharmacy” does not include hospitals licensed under ch. 395, F.S., or the nuclear medicine facilities of such hospitals. See ss. 465.003(11)(a)3. and 465.0193, F.S.

<sup>5</sup> The term “special pharmacy” includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined in this subsection. See ss. 465.003(11)(a)4. and 465.0196, F.S.

<sup>6</sup> The term “internet pharmacy” includes locations not otherwise licensed or issued a permit under this chapter, within or outside this state, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. See ss. 465.003(11)(a)5. and 465.0197, F.S.

<sup>7</sup> The term “nonresident sterile compounding pharmacy” includes a pharmacy that ships, mails, delivers, or dispenses, in any manner, a compounded sterile product into Florida, a nonresident pharmacy registered under s. 465.0156, F.S., or an outsourcing facility, must hold a nonresident sterile compounding permit See s. 465.0158, F.S.

<sup>8</sup> See Fla. Admin. Code R. 64B16-28.100 and 64B16-28.802 (2020). An outsourcing facility is considered a pharmacy and needs to hold a special sterile compounding permit if it engages in sterile compounding.

<sup>9</sup> See ss. 465.003(11)(a)1. and 465.018, F.S.

<sup>10</sup> Fla. Admin. Code R. 64B16-28.100(2) (2020).

apply to the DOH. If the BOP certifies that an application complies with the laws and the rules governing pharmacies, the DOH must issue the permit.

No permit shall be issued unless a licensed pharmacist is designated as the prescription department manager.<sup>11</sup> A registered pharmacist may not serve as the prescription department manager in more than one location unless approved by the BOP.<sup>12</sup> Permits issued by the DOH are not transferable.<sup>13</sup> Passing an on-site inspection is a prerequisite to the issuance of an initial permit or a permit for a change of location. The DOH must make the inspection within 90 days before issuance of the permit.<sup>14</sup>

The BOP may suspend or revoke the permit of, or may refuse to issue a permit to:

- Any person who has been disciplined or who has abandoned a permit or allowed a permit to become void after written notice that disciplinary proceedings had been or would be brought against the permit;
- Any person who is an officer, director, or person interested directly or indirectly in a person or business entity that has had a permit disciplined or abandoned or become void after written notice that disciplinary proceedings had been or would be brought against the permit; or
- Any person who is or has been an officer of a business entity, or who was interested directly or indirectly in a business entity, the permit of which has been disciplined or abandoned or become null and void after written notice that disciplinary proceedings had been or would be brought against the permit.<sup>15</sup>

A community pharmacy that dispenses controlled substances must maintain a record of all such dispensing, consistent with the requirements of s. 893.07, F.S., and must make the record available to the DOH or law enforcement agencies upon request.<sup>16</sup>

### **Pharmacist Licensure**

A person desiring to be licensed in Florida as a pharmacist must:<sup>17</sup>

- Complete an application and remit an examination fee;
- Be at least 18 years of age;
- Hold a degree from an accredited and approved school or college of pharmacy;<sup>18</sup>
- Have completed a board-approved internship; and
- Successfully complete the board-approved examination.

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<sup>11</sup> Section 465.018(2), F.S.

<sup>12</sup> Section 465.022(11)(c), F.S.

<sup>13</sup> Section 465.022(13), F.S.

<sup>14</sup> Section 465.018(6), F.S.

<sup>15</sup> Section 465.018(3), F.S.

<sup>16</sup> Section 465.018(7), F.S.

<sup>17</sup> Section 465.007, F.S. The DOH may also issue a license by endorsement to a pharmacist who is licensed in another state upon meeting the applicable requirements set forth in law and rule. *See* s. 465.0075, F.S.

<sup>18</sup> If the applicant has graduated from a 4-year undergraduate pharmacy program of a school or college of pharmacy located outside the United States, the applicant must demonstrate proficiency in English, pass the board-approved Foreign Pharmacy Graduate Equivalency Examination, and complete a minimum of 500 hours in a supervised work activity program within Florida under the supervision of a DOH-licensed pharmacist. Section 465.007(1)(b)2., F.S.

A pharmacist must complete at least 30 hours of board-approved continuing education during each biennial renewal period.<sup>19</sup> Pharmacists who are certified to administer vaccines or epinephrine autoinjections must complete a three-hour continuing education course on the safe and effective administration of vaccines and epinephrine injections as a part of the biennial licensure renewal.<sup>20</sup> Pharmacists who administer long-acting antipsychotic medications must complete an approved eight-hour continuing education course as a part of the continuing education for biennial licensure renewal.<sup>21</sup>

### Pharmacist Scope of Practice

In Florida, the “practice of the profession of pharmacy” includes:<sup>22</sup>

- Compounding, dispensing, and consulting concerning contents, therapeutic values, and uses of a medicinal drug;
- Consulting concerning therapeutic values and interactions of patent or proprietary preparations;
- Monitoring a patient’s drug therapy and assisting the patient in the management of his or her drug therapy, including the review of the patient’s drug therapy and communication with the patient’s prescribing health care provider or other persons specifically authorized by the patient, regarding the drug therapy;
- Transmitting information from prescribers to their patients;
- Administering vaccines to adults;<sup>23</sup>
- Administering epinephrine injections;<sup>24</sup>
- Administering antipsychotic medications by injection at the direction of a physician;<sup>25</sup> and
- Other pharmaceutical services.<sup>26</sup>

A pharmacist may not alter a prescriber’s directions, diagnose or treat any disease, initiate any drug therapy, or practice medicine or osteopathic medicine, unless permitted by law.<sup>27</sup>

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<sup>19</sup> Section 465.009, F.S.

<sup>20</sup> Section 465.009(6), F.S.

<sup>21</sup> Section 465.1893, F.S.

<sup>22</sup> Section 465.003(13), F.S.

<sup>23</sup> See s. 465.189, F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Section 465.1893, F.S.

<sup>26</sup> Section 465.003(13), F.S. The term “other pharmaceutical services” means the monitoring of the patient’s drug therapy and assisting the patient in the management of his or her drug therapy, and includes review of the patient’s drug therapy and communication with the patient’s prescribing health care provider as licensed under chs. 458, 459, 461, or 466, F.S., or similar statutory provision in another jurisdiction, or such provider’s agent or such other persons as specifically authorized by the patient, regarding the drug therapy . . . The “practice of the profession of pharmacy” also includes any other act, service, operation, research, or transaction incidental to, or forming a part of, any of the foregoing acts, requiring, involving, or employing the science or art of any branch of the pharmaceutical profession, study, or training, and shall expressly permit a pharmacist to transmit information from persons authorized to prescribe medicinal drugs to their patients. The practice of the profession of pharmacy also includes the administration of vaccines to adults. *Id.*

<sup>27</sup> *Supra* note 22.

### **Automated Pharmacy Systems (APS)**

An APS is a mechanical system that delivers prescription drugs from a Florida-licensed pharmacy and maintains related transaction information.<sup>28</sup> A mechanical pharmacy system performs operations or activities, other than compounding or administration, relative to storage, packaging, dispensing, or distribution of medication, and collects, controls, and maintains all transaction information.<sup>29</sup>

Current Florida law<sup>30</sup> provides that a pharmacy may provide pharmacy services to a long-term care facility,<sup>31</sup> a hospice,<sup>32</sup> or a state correctional institution<sup>33</sup> through the use of an APS under the following parameters:

- The APS need not be located at the same location as the pharmacy.
- Drugs stored in bulk or unit of use in the APS are part of the inventory of the pharmacy providing the services, and drugs delivered by the APS are considered to have been dispensed by that pharmacy.
- The operation of the APS must be under the supervision of a Florida-licensed pharmacist. Such a supervisor need not be physically present at the site of the APS and may supervise the system electronically.
- The supervising pharmacist is required to develop and implement policies and procedures to verify that drugs delivered by the APS are accurate and valid and that the machine is properly restocked.
- The BOP is required to adopt rules governing APS use which must specify requirements for recordkeeping, security, and labeling. The labeling requirements must permit the use of unit-dose medications if the facility, hospice, or correctional institution maintains medication-administration records that include directions for use of the medication and if the APS identifies the dispensing pharmacy, the prescription number, the name of the patient, and the name of the prescribing practitioner.

Florida law does not currently provide for a pharmacy to provide pharmacy services via an APS in any venue other than a long-term care facility, hospice, or state correctional institution.

Under BOP rules, a community pharmacy may use an automated pharmacy system if:

- The APS is:

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<sup>28</sup> Section 465.003(17), F.S.

<sup>29</sup> Fla. Admin. Code R. 64B16-28.141(1)(a) (2020).

<sup>30</sup> See s. 465.0235, F.S.

<sup>31</sup> A “long-term care facility” means a nursing home facility, assisted living facility, adult family-care home, board and care facility, or any other similar residential adult care facility. Section 400.0060(6), F.S.

<sup>32</sup> Section 400.601(6), F.S., defines a “hospice residential unit” as a homelike living facility, and includes a facility licensed under chs. 395 or 429, F.S., that is operated by a hospice for the benefit of its patients and is considered by a patient who lives there to be his or her primary residence.

<sup>33</sup> A “state correctional institution” means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the Department of Corrections. See s. 944.02 (8), F.S.

- Located within the prescription department, adjacent to the prescription department, or is located on the establishment<sup>34</sup> of the licensed pharmacy, and its operation is under the supervision of a pharmacist.
- Not located within the prescription department but is operated as an extension of the licensed pharmacy.
- Not located within the prescription department but has the name, address, contact information, and permit number of the community pharmacy that is responsible for the operation of the automated pharmacy system conspicuously displayed on the automated pharmacy system.
- The pharmacy develops and maintains a policy and procedure manual.
- The APS ensures that each prescription is dispensed according to the definition of “dispense” found in s. 465.003, F.S., and as used in the practice of the profession of pharmacy. The system must include a mechanism to ensure that the patient has a means to communicate with a pharmacist responsible for dispensing the medical drug product, and the means of communication may include in-person, electronic, digital, or telephonic.
- The APS must maintain a readily retrievable electronic record to identify all pharmacists, pharmacy interns, registered pharmacy technicians, or other personnel involved in the dispensing of a prescription.
- The APS must provide the ability to comply with product recalls generated by the manufacturer, distributor, or pharmacy. The system must have a process in place to isolate affected lot numbers, including an intermix of drug product lot numbers.<sup>35</sup>

### III. Effect of Proposed Changes:

CS/CS/SB 708 amends s. 465.0235, F.S., to permit a licensed community pharmacy to provide outpatient pharmacy services for the dispensing of medicinal drugs through the use of an automated pharmacy system (APS) located outside the community pharmacy if:

- The APS is under the supervision and control of the community pharmacy;
- The APS is located in an indoor environment area that increases patients’ access to medicinal prescriptions, including, but not limited to:
  - Medical facilities;
  - Places of business where essential goods and commodities are sold;
  - Rural areas of the state;
  - Large employer workplaces; and
  - Locations where access to a community pharmacy is limited.
- The Board of Pharmacy (board) is notified of all locations of APSs, and any change;
- The APS has a mechanism that provides live, real time patient counseling by a pharmacist;
- The APS does not contain any controlled substances;
- The community pharmacy maintains records of the drugs dispensed including specific information;
- The APS ensures confidentiality of personal health information; and

<sup>34</sup> An “establishment” is one general physical location that may extend to one or more contiguous suites, units, floors, or buildings operated and controlled exclusively by entities under common operation and control. Where multiple buildings are under common ownership, operation, and control, an intervening thoroughfare does not affect the contiguous nature of the buildings. Fla. Admin. Code R. 64B16-28.141(1)(b) (2020).

<sup>35</sup> Fla. Admin. Code R. 64B16-28.141(2) (2020).

- The community pharmacy maintains written policies and procedures to ensure the proper, safe, and secure functioning of the APS.

The bill requires that medicinal drugs stored in bulk or unit of use in an automated pharmacy system servicing a long-term care facility, hospice, or correctional institution, or for outpatient dispensing, must be part of the inventory of the pharmacy providing pharmacy services to that facility, hospice, or institution, or for outpatient dispensing, and medicinal drugs delivered by the automated pharmacy system are considered to have been dispensed by that pharmacy.

The bill deletes the current-law requirement for the board to adopt rules governing the use of APSs and instead authorizes the board to adopt such rules. If adopted, such rules must include all of the following:

- Recordkeeping requirements;
- Security requirements; and
- Labeling requirements that permit the use of unit-dose medications for a facility, hospice, or institutions that maintains medication-administration records that include directions for use of the medication and the APS identifies all of the following:
  - The dispensing pharmacy;
  - The prescription number;
  - The name of the patient; and
  - The name of the prescribing practitioner.

The bill provides an effective date of July 1, 2020.

#### **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:**

There may be an indeterminate cost, or a savings, to the public of having medicinal drugs readily available for dispensing through the use of an APS at locations inside a community pharmacy or inside the same establishment as a community pharmacy.

**C. Government Sector Impact:**

The DOH will experience a recurring increase in workload associated with the requirement for community pharmacies to notify the Board of Pharmacy of the location and any changes to the location of the automated pharmacy systems, yet it is anticipated that current resources are adequate to absorb such costs.<sup>36</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 465.0235 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Rules on February 26, 2020:**

The CS:

- Eliminates the underlying bill's restriction that APSs must be located inside a community pharmacy department or inside the same establishment and instead allows an APS to be locate outside the community pharmacies at:
  - Medical facilities;
  - Places of business where essential goods and commodities are sold;
  - Rural areas of the state;
  - Large employer workplaces; and
  - Locations where access to a community pharmacy is limited.

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<sup>36</sup> The Department of Health, *Senate Bill 708 Agency Legislative Bill Analysis* (Nov. 13, 2019) (on file with the Senate Committee on Innovation, Industry, and Technology).

- Requires the community pharmacy to maintain written policies and procedures to ensure the proper, safe, and secure functioning of its APS.
- Authorizes, rather than requires, the Board of Pharmacy to adopt rules governing a community pharmacy's use of an APS.

**CS by Health Policy on January 14, 2020:**

The CS:

- Eliminates the authorization for the use of an APS not located at the same location as the community pharmacy;
- Adds the requirement that the automated pharmacy system be located either:
  - Inside the community pharmacy's pharmacy department; or
  - Inside the same establishment as the community pharmacy; and
- Mandates that an APS may not contain or dispense any controlled substances listed in s. 893.03, F.S., or 21 U.S.C. s. 812 and eliminates reference to schedules II through V for controlled substances.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2020	.	
	.	
	.	
	.	

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The Committee on Rules (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 465.0235, Florida Statutes, is amended  
to read:

465.0235 Automated pharmacy systems used by long-term care  
facilities, hospices, or state correctional institutions or for  
outpatient dispensing.—

(1) A pharmacy may provide pharmacy services to a long-term  
care facility or hospice licensed under chapter 400 or chapter



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12 429 or a state correctional institution operated under chapter  
13 944 through the use of an automated pharmacy system that need  
14 not be located at the same location as the pharmacy.

15 (2) A community pharmacy, as defined in s. 465.003(11),  
16 which is licensed in this state may provide pharmacy services  
17 for outpatient dispensing through the use of an automated  
18 pharmacy system that need not be located at the same location as  
19 the community pharmacy if:

20 (a) The automated pharmacy system is under the supervision  
21 and control of the community pharmacy.

22 (b) The automated pharmacy system is housed in an indoor  
23 environment area and in a location that increases patients'  
24 access to their prescriptions, including, but not limited to,  
25 medical facilities, places of business where essential goods and  
26 commodities are sold, rural areas of the state, large employer  
27 workplaces, and locations where access to a community pharmacy  
28 is limited.

29 (c) The community pharmacy providing services through the  
30 automated pharmacy system notifies the board of the location of  
31 the automated pharmacy system and any changes in such location.

32 (d) The automated pharmacy system has a mechanism that  
33 provides live, real-time patient counseling by a pharmacist, as  
34 defined in s. 465.003(10) and who is licensed in this state,  
35 before the dispensing of any medicinal drug.

36 (e) The automated pharmacy system does not contain or  
37 dispense any controlled substance listed in s. 893.03 or 21  
38 U.S.C. s. 812.

39 (f) The community pharmacy maintains a record of the  
40 medicinal drugs dispensed which includes the identity of the



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41 pharmacist responsible for verifying the accuracy of the dosage  
42 and directions and providing patient counseling.

43 (g) The automated pharmacy system ensures the  
44 confidentiality of personal health information.

45 (h) The community pharmacy maintains written policies and  
46 procedures to ensure the proper, safe, and secure functioning of  
47 the automated pharmacy system. The community pharmacy shall  
48 annually review the policies and procedures and maintain a  
49 record of them for a minimum of 4 years. The annual review must  
50 be documented in the community pharmacy's records and must be  
51 made available to the board upon request. The policies and  
52 procedures must, at a minimum, address all of the following:

53 1. Maintaining in good working order the automated pharmacy  
54 system and any accompanying electronic verification process.

55 2. Ensuring the integrity of the automated pharmacy  
56 system's drug identifier database and its ability to identify  
57 the person responsible for making database entries.

58 3. Ensuring the accurate filling, stocking, and  
59 verification of the automated pharmacy system.

60 4. Ensuring sanitary operation of the automated pharmacy  
61 system and prevention of cross-contamination of cells,  
62 cartridges, containers, cassettes, or packages.

63 5. Testing the accuracy of the system and any accompanying  
64 electronic verification process. The automated pharmacy system  
65 and accompanying electronic verification process must, at a  
66 minimum, be tested before the first use of the system, upon  
67 restarting the system, and after a modification of the system or  
68 electronic verification process which alters the filling or  
69 electronic verification process.



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70           6. Training persons authorized to access, stock, restock,  
71 or use the system.

72           7. Conducting routine and preventative maintenance of the  
73 automated pharmacy system, including calibration, if applicable.

74           8. Removing expired, adulterated, misbranded, or recalled  
75 drugs from the automated pharmacy system.

76           9. Preventing unauthorized persons from accessing the  
77 automated pharmacy system, including assigning, discontinuing,  
78 or modifying security access.

79           10. Identifying and recording persons responsible for  
80 stocking and filling the automated pharmacy system.

81           11. Ensuring compliance with state and federal law,  
82 including, but not limited to, all applicable labeling, storage,  
83 and security requirements.

84           12. Maintaining an ongoing quality assurance program that  
85 monitors performance of the automated pharmacy system and any  
86 accompanying electronic verification process to ensure proper  
87 and accurate functioning, including tracking and documenting  
88 system errors. A community pharmacy must maintain such  
89 documentation for a minimum of 4 years and must produce it to  
90 the board upon request.

91           (3)(2) Medicinal drugs stored in bulk or unit of use in an  
92 automated pharmacy system servicing a long-term care facility,  
93 hospice, or correctional institution, or for outpatient  
94 dispensing, are part of the inventory of the pharmacy providing  
95 pharmacy services to that facility, hospice, or institution, or  
96 for outpatient dispensing, and medicinal drugs delivered by the  
97 automated pharmacy system are considered to have been dispensed  
98 by that pharmacy.



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99            (4)~~(3)~~ The operation of an automated pharmacy system must  
100 be under the supervision of a ~~Florida-licensed~~ pharmacist  
101 licensed in this state. To qualify as a supervisor for an  
102 automated pharmacy system, the pharmacist need not be physically  
103 present at the site of the automated pharmacy system and may  
104 supervise the system electronically. The ~~Florida-licensed~~  
105 pharmacist shall be required to develop and implement policies  
106 and procedures designed to verify that the medicinal drugs  
107 delivered by the automated pharmacy ~~dispensing~~ system are  
108 accurate and valid and that the machine is properly restocked.

109            (5)~~(4)~~ The Legislature does not intend for this section to  
110 limit the current practice of pharmacy in this state. This  
111 section is intended to allow automated pharmacy systems to  
112 enhance the ability of a pharmacist to provide pharmacy services  
113 in locations that do not employ a full-time pharmacist. This  
114 section does not limit or replace the use of a consultant  
115 pharmacist.

116            (6)~~(5)~~ The board may ~~shall~~ adopt rules governing the use of  
117 ~~an~~ automated pharmacy systems. If adopted, such rules ~~system by~~  
118 ~~January 1, 2005, which~~ must include all of the following  
119 specify:

- 120            (a) Recordkeeping requirements.~~†~~  
121            (b) Security requirements.~~†~~ ~~and~~  
122            (c) Labeling requirements that permit the use of unit-dose  
123 medications if the facility, hospice, or institution maintains  
124 medication-administration records that include directions for  
125 use of the medication and the automated pharmacy system  
126 identifies all of the following:  
127            1. The dispensing pharmacy.~~†~~



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- 128           2. The prescription number.~~†~~  
129           3. The name of the patient.~~†~~~~and~~  
130           4. The name of the prescribing practitioner.  
131           Section 2. This act shall take effect July 1, 2020.  
132

133 ===== T I T L E   A M E N D M E N T =====

134 And the title is amended as follows:

135           Delete everything before the enacting clause  
136 and insert:

137                           A bill to be entitled

138           An act relating to automated pharmacy systems;  
139           amending s. 465.0235, F.S.; authorizing a community  
140           pharmacy to use an automated pharmacy system under  
141           certain circumstances; providing that certain  
142           medicinal drugs stored in an automated pharmacy system  
143           for outpatient dispensing are part of the inventory of  
144           the pharmacy providing services through such system;  
145           requiring community pharmacies to adopt certain  
146           policies and procedures; authorizing, rather than  
147           requiring, the Board of Pharmacy to adopt specified  
148           rules; deleting an obsolete date; providing an  
149           effective date.

By the Committee on Health Policy; and Senator Hutson

588-02265-20

2020708c1

1 A bill to be entitled  
 2 An act relating to automated pharmacy systems;  
 3 amending s. 465.0235, F.S.; authorizing a community  
 4 pharmacy to use an automated pharmacy system under  
 5 certain circumstances; providing that certain  
 6 medicinal drugs stored in an automated pharmacy system  
 7 for outpatient dispensing are part of the inventory of  
 8 the pharmacy providing services through such system;  
 9 requiring the Board of Pharmacy to adopt rules;  
 10 providing an effective date.

11 Be It Enacted by the Legislature of the State of Florida:  
 12  
 13

14 Section 1. Section 465.0235, Florida Statutes, is amended  
 15 to read:

16 465.0235 Automated pharmacy systems used by long-term care  
 17 facilities, hospices, or state correctional institutions, or for  
 18 outpatient dispensing.-

19 (1) A pharmacy may provide pharmacy services to a long-term  
 20 care facility or hospice licensed under chapter 400 or chapter  
 21 429 or a state correctional institution operated under chapter  
 22 944 through the use of an automated pharmacy system that need  
 23 not be located at the same location as the pharmacy.

24 (2) A community pharmacy, as defined in s. 465.003, which  
 25 is licensed in this state may provide pharmacy services for  
 26 outpatient dispensing through the use of an automated pharmacy  
 27 system if:

28 (a) The automated pharmacy system is located inside the  
 29 community pharmacy's pharmacy department or is located inside

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

588-02265-20

2020708c1

30 the same establishment as the community pharmacy.

31 (b) The automated pharmacy system is under the supervision  
 32 and control of the community pharmacy.

33 (c) The community pharmacy providing services through the  
 34 automated pharmacy system notifies the board of the location of  
 35 the automated pharmacy system and any changes in such location.

36 (d) The automated pharmacy system is under the supervision  
 37 and control of a pharmacist, as defined in s. 465.003, who is  
 38 licensed in this state and is available and accessible for  
 39 patient counseling before the dispensing of any medicinal drug.

40 (e) The automated pharmacy system does not contain or  
 41 dispense any controlled substances listed in s. 893.03 or 21  
 42 U.S.C. s. 812.

43 (f) The community pharmacy maintains a record of the  
 44 medicinal drugs dispensed, including the identity of the  
 45 pharmacist responsible for verifying the accuracy of the dosage  
 46 and directions and providing patient counseling.

47 (g) The automated pharmacy system ensures the  
 48 confidentiality of personal health information.

49 (3)(2) Medicinal drugs stored in bulk or unit of use in an  
 50 automated pharmacy system servicing a long-term care facility,  
 51 hospice, or correctional institution, or for outpatient  
 52 dispensing, are part of the inventory of the pharmacy providing  
 53 pharmacy services to that facility, hospice, or institution, or  
 54 for outpatient dispensing, and medicinal drugs delivered by the  
 55 automated pharmacy system are considered to have been dispensed  
 56 by that pharmacy.

57 (4)(3) The operation of an automated pharmacy system must  
 58 be under the supervision of a ~~Florida-licensed~~ pharmacist

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2020708c1

59 licensed in this state. To qualify as a supervisor for an  
 60 automated pharmacy system, the pharmacist need not be physically  
 61 present at the site of the automated pharmacy system and may  
 62 supervise the system electronically. The ~~Florida-licensed~~  
 63 pharmacist shall be required to develop and implement policies  
 64 and procedures designed to verify that the medicinal drugs  
 65 delivered by the automated pharmacy dispensing system are  
 66 accurate and valid and that the machine is properly restocked.

67 (5)(4) The Legislature does not intend for this section to  
 68 limit the current practice of pharmacy in this state. This  
 69 section is intended to allow automated pharmacy systems to  
 70 enhance the ability of a pharmacist to provide pharmacy services  
 71 in locations that do not employ a full-time pharmacist. This  
 72 section does not limit or replace the use of a consultant  
 73 pharmacist.

74 (6)(5) The board shall adopt rules governing the use of ~~an~~  
 75 automated pharmacy systems ~~system~~ by ~~January 1, 2005~~, which must  
 76 include specify:

- 77 (a) Recordkeeping requirements.~~†~~  
 78 (b) Security requirements.~~† and~~  
 79 (c) Labeling requirements that permit the use of unit-dose  
 80 medications if the facility, hospice, or institution maintains  
 81 medication-administration records that include directions for  
 82 use of the medication and the automated pharmacy system  
 83 identifies:
- 84 1. The dispensing pharmacy.~~†~~
  - 85 2. The prescription number.~~†~~
  - 86 3. The name of the patient.~~† and~~
  - 87 4. The name of the prescribing practitioner.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-02265-20

2020708c1

88 Section 2. This act shall take effect July 1, 2020.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 6, 2020

---

I respectfully request that **Senate Bill # 708**, relating to Automated Pharmacy Systems, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script, reading "Travis Hutson".

---

Senator Travis Hutson  
Florida Senate, District 7

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/24/20  
Meeting Date

708  
Bill Number (if applicable)

379430  
Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name CYNTHIA HENDERSON

Job Title \_\_\_\_\_

Address 108 E. JEFFERSON ST - Suite A  
Street

Phone 850 559 0855

Tallahassee FL 32501  
City State Zip

Email CYHENDERSON@  
MLC.COM

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing EPIC PHARMACY

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

February 26, 2020

*Meeting Date*

708

*Bill Number (if applicable)*

Topic Automated Pharmacy Systems

*Amendment Barcode (if applicable)*

Name Michael Jackson

Job Title Executive Vice President and CEO

Address 610 North Adams Street

Phone (850) 222-2400

*Street*

Tallahassee

Florida

32301

Email mjackson@pharmview.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Florida Pharmacy Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/26/20

Meeting Date

708

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Cynthia Henderson

Job Title \_\_\_\_\_

Address 108 E. Jefferson St. suite A

Phone 850 589 0855

Street

Tallahassee FL 32301

City

State

Zip

Email cynthenderson@me.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing EPIC PHARMACY

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-26-20

Meeting Date

708

Bill Number (if applicable)

Topic AUTOMATED RIX DISPENSING

Amendment Barcode (if applicable)

Name SAZ NUZZO

Job Title VP POLICY

Address 100 N DUVAR  
Street

Phone 850-322-9941

TAM. FL 32301  
City State Zip

Email SNUZZO@JAMESMADISON.ORG

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing THE JAMES MADISON INSTITUTE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/26/2020  
Meeting Date

708  
Bill Number (if applicable)

Topic Automated Pharmacy Systems

Amendment Barcode (if applicable)

Name JAKE FARMER

Job Title Director Government Affairs

Address 227 S. Adams St.

Phone 850 222 4082

Tallahassee FL 32301  
City State Zip

Email Jake@frf.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Retail Federation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/26/2020

Meeting Date

SB 708

Bill Number (if applicable)

Topic AUTOMATED PHARMACY SYSTEMS

Amendment Barcode (if applicable)

Name CESAR GRASALES

Job Title COALITIONS DIRECTOR

Address 200 N. COLLEGE AVE.

Phone 786.260.9293

Street

TALLAHASSEE FL.

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing AMERICANS FOR PROSPERITY

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/26/20  
Meeting Date

SB-708  
Bill Number (if applicable)

Topic Automated Pharmacy Syst

Amendment Barcode (if applicable)

Name Ivonne Fernandez

Job Title Associate State Director

Address 215 Monroe Street

Phone 954-850-7262

Talhn FL  
City State Zip

Email ifefernandez@220p.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing AARP

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

7-26-20

Meeting Date

708

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Richard Pinsky

Job Title \_\_\_\_\_

Address 106 E College Ave # 1200

Phone \_\_\_\_\_

Tallahassee FL 32301

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing MedAvail Technologies

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1872

INTRODUCER: Banking and Insurance Committee; Governmental Oversight and Accountability Committee; and Senator Hutson

SUBJECT: Public Records/Office of Financial Regulation/Financial Technology Sandbox Applications

DATE: February 24, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
3.	<u>McVaney</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1872 creates public record exemptions for certain records containing proprietary business information related to the Financial Technology Sandbox. Specifically, the bill makes confidential and exempt from public disclosure the following records:

- The reasons why the general law or rule requirements for which an exception or waiver is sought prevent the innovative financial product or service from being made available to consumers;
- Certain information submitted to the Office of Financial Regulation to consider in deciding whether to approve an application for the Financial Technology Sandbox; and
- Any information related to the consultation between the OFR and a sandbox participant regarding the maximum number of consumers authorized to receive the innovative financial product or service.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation.

The bill provides for repeal of the exemptions on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

Government agencies will incur costs related to the redaction of records in responding to public records requests.

This bill will take effect on the same date that CS/CS/SB 1870 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. At this point, CS/CS/SB 1870 takes effect July 1, 2020.

## II. Present Situation:

### Access to Public Records – Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

### Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>5</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted the statutory definition of

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> 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)

<sup>4</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>5</sup> Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

“public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>10</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>12</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>13</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.<sup>14</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

### **Financial Technology Sandbox**

CS/CS/SB 1870 (2020), which this bill is linked to, creates the Financial Technology Sandbox within the Office of Financial Regulation (OFR). The Financial Technology Sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

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<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.07(1)(a), F.S.

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

<sup>11</sup> *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>12</sup> See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>13</sup> See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>14</sup> See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

<sup>15</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

### III. Effect of Proposed Changes:

CS/CS/SB 1872 makes confidential and exempt from public inspection and copying the following records relating to the Financial Technology Sandbox because they will contain proprietary business information:

- The reasons why the general law or rule requirements for which a waiver is sought prevent the innovative financial product or service from being made available to consumers;
- Specified information that the OFR must consider in deciding whether to approve or deny an application for the Financial Technology Sandbox; and
- Any information related to the consultation between the OFR and a sandbox participant regarding the maximum number of consumers authorized to receive the innovative financial product or service.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation.

The bill provides a statement of public necessity as required by the Florida Constitution. It includes the following legislative findings:

- The disclosure of the proprietary business information relating to the innovative financial technology products and services could adversely affect the business interests of the financial technology sandbox applicants.
- Those entities and individuals who would otherwise disclose proprietary business information in their applications to the Office of Financial Regulation to start a business in this state or who would maintain records relating to their innovative financial products or services were they already established here would hesitate to cooperate with the office, and this lack of cooperation would impair the effective and efficient administration of governmental functions.
- Disclosure of such information would impair competition in the financial technology industry because competitors could use the information to impede full and fair competition in the financial technology industry to the disadvantage of consumers.
- Without the exemption from public records requirements that would protect their proprietary business information, financial technology innovators might elect to establish their business in another state with a more secure business environment.
- Any proprietary business information in the Financial Technology Sandbox applications, any records maintained by financial technology innovators relating to their financial products or services, and specified discussions with the office on their financial products or services must be held confidential and exempt from disclosure.

The public record exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities

have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

**B. Public Records/Open Meetings Issues:**

***Vote Requirement***

Article I, s. 24(c) of the 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 exempts from public inspection and copying certain information used by the Office of Financial Regulation to decide whether to approve an application for the Financial Technology Sandbox. 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 disclosure requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains statements of public necessity for justifying the exemption for proprietary business information.

***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 encourage innovative financial products or services to be made available to Florida consumers. This bill exempts proprietary information of the business entity developing a new product or service. The exemption does not appear to be more broad than necessary to accomplish the stated 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:**

The private sector will be subject to the cost associated with an agency making redactions in response to a public records request.

**C. Government Sector Impact:**

Government agencies will incur costs related to the redaction of records in responding to public records requests.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 559.952 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 Banking and Insurance on February 19, 2020:**

- Updates statutory references to conform to CS/CS/SB 1870.

**CS by Governmental Oversight and Accountability on February 10, 2020:**

- Shifts the protected records from those “made available to the commissioner” to those “submitted to the office” of Financial Regulation.
- Narrows the public records exemption (consistent with the public necessity statement) to make confidential and exempt only proprietary business information submitted to the office.

**B. Amendments:**

None.

By the Committees on Banking and Insurance; and Governmental Oversight and Accountability; and Senator Hutson

597-03962-20

20201872c2

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 559.952, F.S.; providing exemptions from public  
 4 records requirements for certain information submitted  
 5 to the Office of Financial Regulation in Financial  
 6 Technology Sandbox applications and information  
 7 relating to certain consultations; authorizing the  
 8 office to disclose the information to state and  
 9 federal agencies for investigative purposes; providing  
 10 for future legislative review and repeal of the  
 11 exemptions; providing a statement of public necessity;  
 12 providing a contingent effective date.  
 13  
 14 Be It Enacted by the Legislature of the State of Florida:  
 15  
 16 Section 1. Paragraph (g) is added to subsection (5) and  
 17 paragraph (f) is added to subsection (6) of section 559.952,  
 18 Florida Statutes, as created by SB 1870, 2020 Regular Session,  
 19 to read:  
 20 559.952 Financial Technology Sandbox.—  
 21 (5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR  
 22 APPROVAL.—  
 23 (g)1. The following information submitted to the office in  
 24 a Financial Technology Sandbox application under this subsection  
 25 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
 26 I of the State Constitution:  
 27 a. The reasons why the general law or rule requirements for  
 28 which an exception or waiver is sought prevent the innovative  
 29 financial product or service from being made available to

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-03962-20

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30 consumers.  
 31 b. The information specified in subparagraphs (d)1.-4. and  
 32 (d)7.  
 33  
 34 However, such information may be released to appropriate state  
 35 and federal agencies for purposes of investigation.  
 36 2. This paragraph is subject to the Open Government Sunset  
 37 Review Act in accordance with s. 119.15 and shall stand repealed  
 38 on October 2, 2025, unless reviewed and saved from repeal  
 39 through reenactment by the Legislature.  
 40 (6) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—  
 41 (f)1. Any information relating to the consultation  
 42 described in paragraph (b) is confidential and exempt from s.  
 43 119.07(1) and s. 24(a), Art. I of the State Constitution.  
 44 However, such information may be released to appropriate state  
 45 and federal agencies for the purposes of investigation.  
 46 2. This paragraph is subject to the Open Government Sunset  
 47 Review Act in accordance with s. 119.15 and shall stand repealed  
 48 on October 2, 2025, unless reviewed and saved from repeal  
 49 through reenactment by the Legislature.  
 50 Section 2. The Legislature finds that it is a public  
 51 necessity that proprietary business information in the  
 52 innovative Financial Technology Sandbox be expressly made  
 53 confidential and exempt from public records requirements. The  
 54 disclosure of the proprietary business information relating to  
 55 the innovative financial technology products and services could  
 56 adversely affect the business interests of the Financial  
 57 Technology Sandbox applicants. Those entities and individuals  
 58 who would otherwise disclose proprietary business information in

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-03962-20

20201872c2

59 their applications to the Office of Financial Regulation to  
60 start a business in this state would hesitate to cooperate with  
61 the office, and this lack of cooperation would impair the  
62 effective and efficient administration of governmental  
63 functions. Further, disclosure of such information would impair  
64 competition in the financial technology industry because  
65 competitors could use the information to impede full and fair  
66 competition in the financial technology industry to the  
67 disadvantage of consumers. Without the exemption from public  
68 records requirements which would protect their proprietary  
69 business information, financial technology innovators might  
70 elect to establish their business in another state with a more  
71 secure business environment. Therefore, the Legislature finds  
72 that any proprietary business information in Financial  
73 Technology Sandbox applications and information relating to  
74 specified consultations between Financial Technology Sandbox  
75 applicants and the office on the applicants' financial products  
76 or services must be held confidential and exempt from disclosure  
77 under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of  
78 the State Constitution.

79 Section 3. This act shall take effect on the same date that  
80 SB 1870 or similar legislation takes effect, if such legislation  
81 is adopted in the same legislative session or an extension  
82 thereof and becomes a law.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 20, 2020

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I respectfully request that **Senate Bill #1872**, relating to FinTech Public Records, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Travis Hutson".

---

Senator Travis Hutson  
Florida Senate, District 7

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7066

INTRODUCER: Appropriations Committee

SUBJECT: Fees

DATE: February 24, 2020

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
<u>McKnight</u>	<u>Kynoch</u>		<b>AP Submitted as Comm. Bill/Fav</b>
1. <u>McKnight</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

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**I. Summary:**

SB 7066, which is linked to CS/SB 512, requires nonembryonic stem cell banks (NSCBs) licensed as health care clinics to pay all fees associated with licensure, registration and inspection under part X of chapter 400 and part II of chapter 408, Florida Statutes.

This bill authorizes new state fees, requiring a two-thirds vote of the membership of the Senate. See Section IV.

The bill will have a significant negative fiscal impact on the Agency for Health Care Administration's (AHCA) expenditures that will be offset by the significant positive fiscal impact to the AHCA's revenues from the licensure, registration, and inspection fees collected from NSCBs under the bill See Section V.

The bill takes effect on the same date that CS/SB 512 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

**II. Present Situation:**

**The Florida Constitution**

The Florida Constitution provides that no state tax or fee may be imposed, authorized, or raised by the Legislature except through legislation approved by two-thirds of the membership of each house of the Legislature.<sup>1</sup> For purposes of this requirement, a "fee" is any charge or payment required by law, including any fee or charge for services and fees or costs for licenses and to "raise" a fee or tax means to:<sup>2</sup>

---

<sup>1</sup> Fla. Const. art. VII, s. 19(a)-(b). The amendment appeared on the 2018 ballot as Amendment 5.

<sup>2</sup> Fla. Const. art. VII, s. 19(d).

- Increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis;
- Increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or
- Decrease or eliminate a state tax or fee exemption or credit.

A bill that imposes, authorizes, or raises any state fee or tax may only contain the fee or tax provision(s) and may not contain any other subject.<sup>3</sup>

The constitutional provision does not authorize any state tax or fee to be imposed if it is otherwise prohibited by the constitution and does not apply to any tax or fee authorized or imposed by a county, municipality, school board, or special district.<sup>4</sup>

### **Health Care Clinics**

The Health Care Clinic Act<sup>5</sup> provides the Agency for Health Care Administration (AHCA) with licensing and regulatory authority to provide standards and oversight for health care clinics.<sup>6</sup> A clinic is defined as an entity where health care services are provided and which tenders charges for reimbursement for such services. Numerous exceptions to licensure exist.<sup>7</sup> The AHCA interprets the scope of its regulatory powers to solely include entities that bill third parties, such as Medicare, Medicaid, and insurance companies. Entities that provide health care services and accept “cash only” for services are excluded from the definition of “clinic” and are not subject to licensure or regulation by the AHCA.

### **Nonembryonic Stem Cell Banks**

CS/SB 512 requires the AHCA to license establishments meeting the definition of nonembryonic stem cell banks (NSCBs) as health care clinics. Hospitals, ambulatory surgical centers, and clinical facilities affiliated with an accredited medical school that provides training to medical students, residents, or fellows, are exempt from licensure under CS/SB 512.

CS/SB 512 defines a NSCB as a publicly or privately owned establishment that does any of the following:

- Collects and stores human nonembryonic stem cells for use in a product or patient-specific medical administration.
- Provides patient-specific health care services using human nonembryonic stem cells.
- Advertises human nonembryonic stem cell services, including, but not limited to, collection, manufacturing, storage, dispensing, use, or purported use of human nonembryonic stem cells or products containing human nonembryonic stem cells, which:
  - Have not been approved by the U.S. Food and Drug Administration (FDA); or
  - Are not the subject of clinical trials approved by the FDA; and

---

<sup>3</sup> Fla. Const. art. VII, s. 19(e).

<sup>4</sup> Fla. Const. art. VII s. 19(c).

<sup>5</sup> Part X of ch. 400, F.S.

<sup>6</sup> Section 400.990, F.S.

<sup>7</sup> Section 400.9905(4), F.S.

- Are intended to diagnose, cure, mitigate, treat, provide therapy for, or prevent an injury or a disease.
- Performs any procedure that is intended to:
  - Collect or store human nonembryonic stem cells for any purpose; or
  - Diagnose, cure, mitigate, treat, provide therapy for, or prevent an injury or a disease with the use or purported use of human nonembryonic stem cells or any product containing human nonembryonic stem cells which has not been approved by the FDA or is not the subject of a clinical trial approved by the FDA.
- Compounds human nonembryonic stem cells from human nonembryonic cells or tissue into products by combining, mixing, or altering the ingredients of one or more drugs or products to create another drug or product.
- Manufactures, through recovery, processing, manipulation, enzymatic digestion, mechanical disruption, or a similar process, human nonembryonic stem cells from human nonembryonic cells or tissue into undifferentiated human nonembryonic stem cells, causing the cells to lose their original structural function so that the nonembryonic stem cells may be differentiated into specialized cell types.
- Dispenses human nonembryonic stem cells and products containing nonembryonic stem cells to any of the following, for a specific patient pursuant to a valid prescription from a licensed health care practitioner authorized within the scope of his or her license to prescribe and administer human nonembryonic stem cells:
  - A pharmacy permitted under ch. 465, F.S.;
  - A health care practitioner with privileges to practice at nonembryonic stem cell banks; or
  - A health care practitioner's office, a health care facility, or a treatment setting where the health care practitioner has privileges to practice, for office use.

### **III. Effect of Proposed Changes:**

The bill, which is linked to CS/SB 512, requires nonembryonic stem cell banks licensed as health care clinics to pay all fees associated with licensure, registration and inspection under part X of ch. 400 and part II of ch. 408, F.S.

The bill takes effect on the same date that CS/SB 512 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes 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:**

Article VII, s. 19 of the State Constitution requires that a new state tax or fee, as well as an increased state tax or fee, be approved by two-thirds of the membership of each house of the Legislature and 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 requires nonembryonic stem cell banks (NSCBs) licensed as health care clinics to pay all fees associated with licensure, registration, and inspection under part X of ch. 400 and part II of ch. 408, F.S. These fees include a licensure fee not to exceed \$2,000 authorized in s. 400.9925, F.S., and a biennial assessment of \$300 pursuant to s. 408.033, F.S. These fees are existing statutory fees that are not being increased; however, the bill requires NSCBs to pay all fees associated with licensure, registration, and inspection.

It is unclear if Article VII, s. 19 applies to these provisions of the bill. As such, the State Constitution may require that the fees be passed in a separate bill by a two-thirds vote of the membership of each house of the Legislature.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

SPB 7066 requires nonembryonic stem cell banks (NSCBs) licensed as health care clinics to pay all fees associated with licensure, registration and inspection under part X of ch. 400 and part II of ch. 408, F.S. These fees include a licensure fee not to exceed \$2,000 authorized in s. 400.9925, F.S., and a biennial assessment of \$300 pursuant to s. 408.033, F.S.

The bill’s requirements also impose the costs associated with a level 2 background screening for applicants and personnel as required in s. 408.809(1)(e) pursuant to ch. 435 and s. 408.809, F.S., if they are not already required to be screened under a separate professional licensee. The cost for a level 2 background screening with five years of Care Provider Background Screening Clearinghouse (Clearinghouse) retention is \$61.25 (\$13.25 for the national criminal record check; \$24 for the state criminal record check; and \$24 paid up front for five years of state fingerprint Clearinghouse retention).

**B. Private Sector Impact:**

The Agency for Health Care Administration (AHCA) estimates that 500 facilities may require a health care clinic license under CS/SB 512.<sup>8</sup> Licensure fees would be collected every two years from applicants. Estimating 500 additional health care clinics would result in the collection of \$500,000 in annual licensure fees, based on spreading initial applicants over a two year period (250 per year). Additionally, the facilities will pay a biennial assessment of \$300 that would result in the collection of \$150,000 biennially.

The cost for a level 2 background screening with five years of Clearinghouse retention is \$61.25. The number of individuals impacted by this requirement is indeterminate.

**C. Government Sector Impact:**

The AHCA estimates a recurring increase in workload and costs associated with the registration of NSCBs as health care clinics. Specifically, the AHCA estimates the need for three full-time equivalent positions and \$285,007 in Fiscal Year 2020-2021, and a recurring \$300,250 thereafter, to implement the bill's requirements.<sup>9</sup>

The anticipated increase in expenditures by the AHCA will be offset by the revenues collected from the 500 facilities that the AHCA estimates may require a health care clinic license under CS/SB 512. The AHCA estimates 500 additional health care clinics would result in the collection of \$500,000 in annual licensure fees, based on spreading initial applicants over a two year period (250 per year), and \$150,000 in biennial assessment fees.<sup>10</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 381.06017 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.

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<sup>8</sup> Agency for Health Care Administration, CS/SB 512 Bill Analysis (Feb. 14, 2020) (on file with the Senate Committee on Appropriations).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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738014

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Hutson) recommended the following:

**Senate Amendment**

Delete lines 9 - 23  
and insert:

Section 1. Subsection (6) is added to section 381.06017,  
Florida Statutes, as created by SB 512, to read:

381.06017 Nonembryonic stem cell banks; collection,  
manufacturing, storage, dispensing, and use of human  
nonembryonic stem cells.—

(6) FEES.—An establishment that is required to obtain a  
permit, registration, or license under subsection (2) must pay



738014

12 any fees associated with such permit, registration, or license.

By the Committee on Appropriations

576-03992-20

20207066\_\_

1                           A bill to be entitled  
2           An act relating to fees; amending s. 381.06017, F.S.,  
3           as created by SB 512; requiring certain nonembryonic  
4           stem cell banks to pay specified fees; providing a  
5           contingent effective date.

6  
7   Be It Enacted by the Legislature of the State of Florida:

8  
9           Section 1. Paragraph (i) is added to subsection (2) of  
10          section 381.06017, Florida Statutes, as created by SB 512, to  
11          read:

12           381.06017 Nonembryonic stem cell banks; collection,  
13          manufacturing, storage, dispensing, and use of human  
14          nonembryonic stem cells.—

15           (2) DUTIES AND REGISTRATION.—A nonembryonic stem cell bank  
16          that advertises, collects, stores, manufactures, dispenses,  
17          compounds, uses, or purports to use nonembryonic stem cells or  
18          products containing nonembryonic stem cells is deemed a clinic  
19          as defined in s. 400.9905 and must comply with all of the  
20          following requirements:

21           (i) Pay all fees associated with health care clinic  
22          licensure, registration, and inspection under part X of chapter  
23          400 and part II of chapter 408.

24           Section 2. This act shall take effect on the same date that  
25          SB 512 or similar legislation takes effect, if such legislation  
26          is adopted in the same legislative session or an extension  
27          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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 698

INTRODUCER: Rules Committee; Criminal Justice Committee; and Senators Book and Stewart

SUBJECT: Reproductive Health

DATE: February 28, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	<b>Fav/CS</b>
3.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 698 establishes protections for people who are dealing with infertility and seek medical assistance to artificially conceive a child. In its broadest and most general terms, the bill requires donors, recipients, and facilities to enter into contracts that govern the use of reproductive materials, prohibits the misuse of those reproductive materials, and authorizes disciplinary actions and felony penalties for health care practitioners who intentionally transfer reproductive material into a recipient when the practitioner knows the recipient has not consented to the use of that reproductive material.

The bill creates s. 383.61, F.S., which requires a commissioning party or donor to contract with a donor bank, fertility clinic, or health care practitioner or reproductive storage facility before donating reproductive material. The contract must indicate what will be done with reproductive material that is not used.

This bill provides that by January 1, 2021, donor banks, fertility clinics, health care practitioners, and reproductive storage facilities must establish, and annually submit best practice policies, which are consistent with 42 U.S.C. part 263a(f), to the appropriate licensing agency for review. Donor banks, fertility clinics, health care practitioners, and reproductive storage facilities must clearly label reproductive material, comply with the terms of the contract, and maintain records for a minimum of 30 years. The bill expressly prohibits a health care practitioner from transferring or inseminating a recipient with the reproductive material of the health care practitioner.

This bill creates s. 784.086, F.S., establishing the crime of reproductive battery. It is a third degree felony for a health care practitioner to intentionally transfer into the body of a recipient the reproductive material of a donor that the recipient has not consented to. It is a second degree felony if the health care practitioner uses his or her own reproductive material, unless the recipient has provided written consent to the use of the health care practitioner's reproductive material.

This bill adds new grounds for the discipline of health care practitioners. A health care practitioner who intentionally transfers or inseminates, or causes a recipient to have transferred into her body or be inseminated with reproductive material of a donor without the recipient's consent, is subject to disciplinary action as provided in ss. 456.072, 458.331, or 459.015, F.S., as appropriate. The bill also provides for the immediate suspension of a license if a health care practitioner commits the crime of reproductive battery.

This bill creates s. 456.51, F.S., which provides that a health care practitioner must have written consent to perform a pelvic examination. A health care practitioner may conduct a pelvic examination without written consent if a court orders the performance of the examination for the collection of evidence, the examination is immediately necessary to avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function, or the exam is indicated in the standard of care for a procedure that the patient has consented to.

This bill may have an indeterminate fiscal impact on the licensing agency that annually reviews the best practices policies. Additionally, this bill may have a positive indeterminate prison bed impact (unquantifiable positive prison bed impact). See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2020.

## II. Present Situation:

The recent arrival of genetic testing kits and ancestry reports, such as Ancestry.com or 23andMe, has yielded unsettling results for many users. According to media reports, several fertility doctors who represented that they were using the sperm of a patient's husband or an anonymous donor to artificially inseminate a patient, were in fact lying to their patients. The fertility specialists were inseminating the patients with their own sperm. Even more distressing to the victims of these acts was the realization that the doctors' actions were not actually illegal.<sup>1</sup>

### **Fertility Specialists Alleged to Have Been Sperm Donors to their Patients**

#### *Virginia*

One media report stated that Dr. Cecil Jacobson, a fertility specialist in Vienna, Virginia, may have secretly donated his own sperm to father at least 75 children. Although prosecutors wanted

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<sup>1</sup> Ellen Trachman, Above the Law, *Intense and Dramatic Testimony Propels Texas Fertility Fraud Bill Forward* (April 17, 2019), available at <https://abovethelaw.com/2019/04/intense-and-dramatic-testimony-propels-texas-fertility-fraud-bill-forward/> (last visited February 13, 2020) and CBS News, *Indiana Fertility Doctor Used Own Sperm to Impregnate Patients, Court Docs Say* (September 12, 2016), available at <https://www.cbsnews.com/news/indiana-fertility-doctor-used-own-sperm-to-impregnate-women-court-docs-say/> (last visited February 13, 2020).

to try Dr. Jacobson for lying to patients about the source of the sperm, no laws at that time prohibited a doctor from donating sperm to a patient. Instead, prosecutors charged him with the more basic counts of criminal fraud in his medical practice which involved the use of telephones and the United States Postal Service. He was convicted of committing 52 counts of fraud and perjury in 1992.<sup>2</sup>

### ***Connecticut***

A doctor in Greenwich, Connecticut, Ben D. Ramaley, settled a lawsuit in 2009 for secretly using his own sperm to impregnate a patient. The case was settled without any depositions being taken, but a gag order was issued which prevented the plaintiffs from discussing the case.<sup>3</sup>

When Barbara Rousseau used genetic testing to learn who her biological father was, she was astounded to learn that her father was actually her mother's fertility specialist in 1977, not an anonymous sperm donor. Barbara's parents filed a fertility fraud lawsuit against Dr. John Boyd Coats of Berlin, Vermont, in December, 2018, and seek compensatory and exemplary damages. The suit alleges that the doctor's conduct was "outrageously reprehensible" and had the character of outrage that is often "associated with a crime" and was done with malice.<sup>4</sup>

### ***Indiana***

In 2018, Dr. Ronald Cline of Zionsville, Indiana, surrendered his medical license after pleading guilty to two counts of obstruction of justice. It was alleged that he inseminated dozens of women with his own sperm while telling his patients that the donors were anonymous men. DNA tests revealed that he is likely the father of as many as 46 children whose mothers were his patients. Indiana law, at that time, did not specifically prohibit fertility specialists from donating their own sperm.<sup>5, 6</sup>

### ***Colorado***

Dr. Paul Brennan Jones, a fertility specialist in Grand Junction, Colorado, was sued in October, 2019, for using his own sperm, rather than the sperm of anonymous donors, to impregnate women. Maia Emmons-Boring, whose mother relied on Dr. Jones for fertility treatment nearly 40 years earlier, has learned through DNA testing that she and her sister have five known half-siblings who were fathered by Dr. Jones. Ms. Emmons-Boring has been contacted by three

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<sup>2</sup> *Doctor Is Found Guilty in Fertility Case*, N.Y. TIMES (March 5, 1992), available at <https://perma.cc/J2NA-NUY8> (last visited February 14, 2020), cited by Jody Lynee Madeira, *infra* at Note 4.

<sup>3</sup> LeAnne Gendreau and Diana Perez, NBC Connecticut News, *Fertility Doc Accused of Making His Own Donation* (November 12, 2009) NBC News, available at <https://www.nbcconnecticut.com/news/local/fertility-doctor-may-have-done-the-deed-himself/2060754/> (last visited February 13, 2020).

<sup>4</sup> Jody Lynee Madeira, *Understanding Illicit Insemination and Fertility Fraud, From Patient Experience to Legal Reform*, Columbia Journal of Gender & Law, 2019 Fall Issue 110, 123-124.

<sup>5</sup> Associated Press, *Fertility Doctor Who Used Own Sperm to Impregnate Women Surrenders License* (August 23, 2018), available at <https://nypost.com/2018/08/23/fertility-doctor-who-used-own-sperm-to-impregnate-women-surrenders-license/> (last visited February 13, 2020).

<sup>6</sup> Associated Press, *Indiana Senate Sends Sperm-Misuse Legislation to Governor* (April 17, 2019), available at <https://www.ibj.com/articles/73357-indiana-senate-sends-sperm-misuse-legislation-to-governor> (last visited February 13, 2020).

additional people who are biologically linked to them through DNA testing. The civil lawsuit against the doctor alleges negligence, fraud, and other claims for damages.<sup>7</sup>

### ***Idaho***

In 2019, Dr. Gerald Mortimer, a retired gynecologist in Idaho Falls, Idaho, admitted to using his own sperm to impregnate multiple women in his infertility practice. He left the Obstetrics and Gynecology Associates practice in Idaho Falls because he feared he would be caught using his own sperm to impregnate women. At least one lawsuit is pending against him.<sup>8</sup>

### **The Difficulty of Holding the Doctors Legally Accountable**

Holding the fertility doctors legally accountable for their fraudulent acts, either criminally or civilly, has been difficult. One of the most obvious obstacles is an expired statute of limitation because the fraudulent act often occurred decades before it was discovered. Another obstacle involves the destruction of evidence which could be the destruction of medical records. It is difficult to prosecute a case criminally as a traditional sexual assault case because the women “consented” to the inseminations. It is difficult to prevail in a civil case because the facts do not readily lend themselves to the elements of fraud. The fraudulent inseminations more closely resemble “fraud in the inducement” where a person agrees to a procedure knowing what is involved, but consents to the procedure based upon false representations made by the defendant doctor.<sup>9</sup>

### **Several States’ Responses to Fertility Fraud**

#### ***Texas***

In response to the revelation that the doctors’ actions were not technically illegal, several states have enacted laws to criminalize the doctors’ deceptive acts. Texas, for example, enacted a law in 2019 that creates a sexual assault felony, punishable by up to 2 years’ imprisonment, if a health care services provider, while performing an assisted reproduction procedure, uses human reproductive material from a donor knowing that the recipient has not expressly consented to the use of the material from that donor. Additionally, and because most children born under these fraudulent circumstances and their parents do not discover the truth of their conception until many years later, victims are given 2 years from the time the offense is discovered to bring an action for the crime of sexual assault. The act is prospective in its application.<sup>10</sup>

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<sup>7</sup> Morgan Phillips, Fox News, *Colorado fertility doctor used his own sperm to impregnate women, lawsuit claims* (October 29, 2019), available at <https://www.foxnews.com/us/colorado-fertility-doctor-used-his-own-sperm-to-impregnate-women-lawsuit-claims> (last visited February 13, 2020).

<sup>8</sup> Grace Hansen, EastIdahoNews.com, *Former Idaho Falls Doctor Admits to Using Own Sperm to Inseminate Multiple Patients* (November 7, 2019), available at <https://www.eastidahonews.com/2019/11/former-idaho-falls-gynecologist-admits-to-using-own-sperm-to-father-patients-children/> (last visited February 13, 2020).

<sup>9</sup> *Supra*, Note 4 at 113, 184.

<sup>10</sup> Texas SB 1259 (2019), available at <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=86R&Bill=SB1259> (last visited February 13, 2020).

### *California*

California passed legislation in 2011 that criminalized the use of sperm, ova, or embryos in assisted reproduction technology for a purpose other than that indicated by the provider. A violator will be punished by imprisonment between 3 and 5 years and a fine that does not exceed \$50,000.<sup>11</sup>

### *Indiana*

Indiana similarly enacted legislation in 2019. The statute establishes a cause of action for civil fertility fraud and provides that a prevailing plaintiff may receive compensatory and punitive damages or liquidated damages of \$10,000. The legal action must be commenced within 10 years of the child's 18th birthday, 20 years after the procedure was performed, when the person first discovers evidence through DNA testing, when the person becomes aware of a record that provides sufficient evidence to bring a suit against the defendant, or when the defendant confesses to the offense.<sup>12</sup>

### *Colorado*

Colorado is now considering a bill entitled "Misuse of Human Reproductive Material" which creates a new civil cause of action as well as a criminal offense if a health care provider, during the course of assisted reproduction, uses a donation from someone without obtaining the written consent of the patient. The bill provides for compensatory or liquidated damages of \$50,000 in a civil action and provides a felony penalty for the criminal act. Conviction of the offense is also considered unprofessional conduct under the licensing statute.<sup>13</sup>

### *Additional States Considering Legislation*

Nebraska, Ohio, and Washington state are currently considering legislation to provide redress against physicians for fertility fraud.

### **Florida Law**

It does not appear that Florida law specifically prohibits a health care practitioner from inseminating a patient with reproductive material from a donor without the patient's consent. As discussed above, the statute of limitations, the time allowed to bring an action for a previous act, has generally expired because many people do not realize that fraud was committed until decades after the insemination. Similarly, it would be challenging to prove sexual battery because the patient "consented" to the insemination, and the act was not technically committed against her will.

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<sup>11</sup> California Penal Code s. 367g., available at [https://california.public.law/codes/ca\\_penal\\_code\\_section\\_367g](https://california.public.law/codes/ca_penal_code_section_367g) (last visited February 13, 2020).

<sup>12</sup> Senate Enrolled Act No. 174, an act amending the Indiana Code concerning civil procedure, available at <http://iga.in.gov/legislative/2019/bills/senate/174#document-d66c4e90> (last visited February 13, 2020).

<sup>13</sup> HB 20-1014, Colorado General Assembly, Second Regular Session, 72nd General Assembly, available at <https://www.leg.colorado.gov/bills/hb20-1014> (last visited February 13, 2020).

## **Fertility Clinics in Florida**

As far as staff has been able to determine, no current law requires donor banks or fertility clinics to be regulated, registered, or inspected in the state. According to the DOH, there are approximately 30 fertility clinics operating in the state, some with multiple locations, and four donor banks.<sup>14</sup>

## **Licensing and Penalties**

### *Health Care Practitioners*

The DOH's Division of Medical Quality Assurance (MQA) has regulatory authority over health care practitioners.<sup>15</sup> MQA works in conjunction with 22 boards and 4 councils to license and regulate 7 types of health care facilities and more than 40 health care professions.<sup>16</sup> Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for MQA.

Section 456.072, F.S., authorizes a regulatory board or DOH, if there is no board, to discipline a health care practitioner for a number of offenses, including but not limited to:

- Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.
- Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.
- Engaging or attempting to engage in sexual misconduct as defined in s. 456.063, F.S.

If it is found that a licensee committed a violation, the board or DOH may impose penalties, including but not limited to:<sup>17</sup>

- Refuse to certify, or to certify with restrictions, an application for a license.
- Suspend or permanently revoke a license.
- Impose an administrative fine.
- Issue a reprimand or letter of concern.
- Place the licensee on probation.

The board or DOH, if there is no board, must consider what is necessary to protect the public or to compensate the patient when it decides the penalty to impose.<sup>18</sup>

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<sup>14</sup> Florida Department of Health, *SB 698 Legislative Bill Analysis*, (February 7, 2020) (on file with the Senate Committee on Criminal Justice).

<sup>15</sup> Section 456.001(4), F.S., provides that "health care practitioners," include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dieticians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.

<sup>16</sup> Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2018-2019*, available at [http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/\\_documents/annual-report-1819.pdf](http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1819.pdf) (last visited February 18, 2020).

<sup>17</sup> Section 456.072(2), F.S.

<sup>18</sup> *Id.*

Section 456.074(1), F.S., authorizes the Department of Health to issue an emergency order to suspend a license when someone pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication, certain felonies and misdemeanors.

### *Physicians – Allopathic and Osteopathic*

Florida licenses both allopathic and osteopathic physicians. Allopathic physicians diagnose, treat, operate, or prescribe for any human disease, pain, injury, deformity, or other physical or mental condition.<sup>19</sup> The scope of practice for osteopathic physicians is the same as that of allopathic physicians; however, osteopathic medicine emphasizes the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health.<sup>20</sup>

### *Allopathic – Chapter 458*

Chapter 458, F.S., governs licensure and regulation of the practice of medicine by the Florida Board of Medicine (allopathic board) in conjunction with the DOH. The chapter provides, among other things, licensure requirements. An individual seeking to be licensed as an allopathic physician, must meet certain statutory requirements, including that he or she must not have committed an act or offense that would constitute a basis for disciplining a physician pursuant to s. 458.331, F.S.

Section 458.331, F.S., provides grounds for disciplinary action for allopathic physicians. An allopathic physician may be denied a license or disciplined<sup>21</sup> for certain acts, including, but not limited to:

- Attempting to obtain, obtaining, or renewing a license to practice medicine by bribery, fraudulent misrepresentation, or through an error of the DOH or the board.
- Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or the ability to practice medicine.
- False, deceptive, or misleading advertising.
- Making deceptive, untrue, or fraudulent representations in or related to the practice of medicine or employing a trick or scheme in the practice of medicine.<sup>22</sup>

### *Osteopathic – Chapter 459*

Chapter 459, F.S., governs licensure and regulation of the practice of medicine by the Florida Board of Osteopathic Medicine (osteopathic board), in conjunction the DOH. The chapter provides, among other things, licensure requirements.

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<sup>19</sup> Section 458.305, F.S.

<sup>20</sup> Section 459.003, F.S.

<sup>21</sup> Section 458.331, F.S., provides that physicians found in violation of this section are subject to the penalties provided in s. 456.072(2), F.S.

<sup>22</sup> Section 458.331, F.S.

Section 459.015, F.S., provides grounds for disciplinary actions for osteopathic physicians. An osteopathic physician may be denied a license or disciplined<sup>23</sup> for certain acts, including, but not limited to:

- Attempting to obtain, obtaining, or renewing a license to practice medicine by bribery, fraudulent misrepresentation, or through an error of the DOH or the board.
- Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or the ability to practice medicine.
- Failing to perform a statutory or legal obligation placed upon a licensed osteopathic physician.
- Fraudulently altering or destroying records relating to patient care or treatment, including, but not limited to, patient histories, examination results, and test results.<sup>24</sup>

### *Clinics*

Chapter 400, F.S., governs the licensure and regulation of health care clinics. The chapter provides, among other things, licensing requirements. A license must be obtained by the AHCA to operate a clinic.<sup>25</sup>

Section 400.995, F.S., provides the administrative penalties that the AHCA may impose for a violation of statute or Rule. Administrative penalties, include, but are not limited to:

- Denial of the application for license renewal.
- Revoke and suspend the license.
- Impose administrative fines.<sup>26</sup>

### **Florida Requirements for Informed Consent**

The only general law in Florida on informed consent,<sup>27</sup> appears in ch. 766, F.S., Medical Malpractice and Related matters.<sup>28</sup> However, Florida physicians and physicians practicing within a postgraduate training program approved by the Board of Medicine must explain the medical or surgical procedure to be performed to the patient and obtain the informed consent of the patient. However, the physician does not have to obtain or witness the signature of the patient on the written form evidencing informed consent.<sup>29</sup>

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<sup>23</sup> Section 459.015, F.S., provides that physicians found in violation of this section are subject to the penalties provided in s. 456.072(2), F.S.

<sup>24</sup> Section 459.015, F.S.

<sup>25</sup> Section 400.991, F.S.

<sup>26</sup> Section 400.995, F.S.

<sup>27</sup> Informed consent is a process in which a health care provider educates a patient about the risks, benefits, and alternatives of a procedure or intervention. See William Gossman, Imani Thornton, John Hipskind, *Informed Consent*, (July 2019), available at <https://www.ncbi.nlm.nih.gov/books/NBK430827/> (last visited February 18, 2020).

<sup>28</sup> Section 766.103, F.S., provides generally that no recovery will be allowed against a health care practitioner when informed consent was obtained in accordance with an accepted standard of medical practice and a reasonable person would have an understanding of the procedure from the information that was provided, or the patient would reasonably, under all the circumstances, have undergone the procedure had the health care practitioner obtained informed consent in accordance with the accepted standard of medical practice.

<sup>29</sup> Rule 64B8-9.007, F.A.C.

### ***Pelvic Examinations***

A pelvic examination involves the visual examination of the external genitalia and an internal visual examination of the vaginal walls and cervix using a speculum and palpation of the pelvic organs.<sup>30</sup> Health care practitioners often perform pelvic examinations as a part of the annual well woman visit.<sup>31</sup> A health care practitioner may also perform a pelvic examination to diagnose specific health conditions, such as cancer and bacterial vaginosis.<sup>32</sup>

The American College of Obstetricians and Gynecologists finds that data is currently insufficient to make a recommendation for or against routine pelvic examinations.<sup>33</sup> Therefore, it recommends that pelvic examinations be performed when indicated by medical history or symptoms, such as abnormal bleeding, pelvic pain, or urinary issues.<sup>34</sup>

### ***Pelvic Examinations on Unconscious or Anesthetized Patients***

In recent years, articles have detailed reports of medical students performing pelvic examinations, without consent, on women who are anesthetized or unconscious, a practice that has been common since the late 1800's.<sup>35</sup> In 2003, a study reported that 90 percent of medical students who completed obstetrics and gynecology rotations at four Philadelphia-area hospitals performed pelvic examinations on anesthetized patients for educational purposes.<sup>36</sup>

Several medical organizations have taken positions that pelvic examinations should not be performed on anesthetized or incapacitated patients, including:

- The American Medical Association Council on Ethical and Judicial Affairs recommends that in situations where the patient will be temporarily incapacitated (e.g., anesthetized) and

<sup>30</sup> A pelvic examination usually involves an examination of a woman's vulva, vagina, uterus, ovaries, and fallopian tubes. It may also include examination of the bladder and the rectum. See Melissa Conrad Stoppler, MD, MedicineNet, *Pelvic Exam*, available at [https://www.medicinenet.com/pelvic\\_exam/article.htm#why\\_is\\_a\\_pelvic\\_exam\\_performed](https://www.medicinenet.com/pelvic_exam/article.htm#why_is_a_pelvic_exam_performed) (last visited February 18, 2020).

<sup>31</sup> Amir Qaseem, et al., *Screening Pelvic Examination in Adult Women: A Clinical Practice Guideline from the American College of Physicians*, 161 *Ann Intern Med* 67 (July 2014), available at <https://annals.org/aim/fullarticle/1884537/screening-pelvic-examination-adult-women-clinical-practice-guideline-from-american?ga=2.7498674.1663533724.1580510917-1215329083.1580510917> (last visited February 18, 2020).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See: Paul Hsieh, *Pelvic Exams on Anesthetized Women Without Consent: A Troubling and Outdated Practice*, FORBES (May 14, 2018), available at <https://www.forbes.com/sites/paulhsieh/2018/05/14/pelvic-exams-on-anesthetized-women-without-consent-a-troubling-and-outdated-practice/#74d152df7846> (last visited February 18, 2020); Dr. Jennifer Tsai, *Medical Students Regularly Practice Pelvic Exams on Unconscious Patients. Should They?*, ELLE (June 24, 2019), available at <https://www.elle.com/life-love/a28125604/nonconsensual-pelvic-exams-teaching-hospitals/> (last visited February 18, 2020); Lorelei Laird, *Pelvic Exams Performed without Patients' Permission Spur New Legislation*, ABA JOURNAL (September 2019), available at <http://www.abajournal.com/magazine/article/examined-while-unconscious> (last visited February 18, 2020); and Amanda Eisenberg, *New Bills Would Ban Pelvic Exams without Consent*, POLITICO (March 14, 2019), available at <https://www.politico.com/states/new-york/albany/story/2019/03/13/new-bills-would-ban-pelvic-exams-without-consent-910976> (last visited February 18, 2020).

<sup>36</sup> John Duncan, Dan Luginbill, Matthew Richardson, Robin Fretwell Wilson, *Using Tort Law to Secure Patient Dignity: Often Used as Teaching Tools for Medical Students, Unauthorized Pelvic Exams Erode Patient Rights, Litigation Can Reinstate Them*, 40 *TRIAL* 42 (October 2004).

where student involvement is anticipated, involvement should be discussed before the procedure is undertaken whenever possible.<sup>37</sup>

- The Committee on Ethics of the American College of Obstetricians and Gynecologists resolved that “pelvic examinations on an anesthetized woman that offer her no personal benefit and are performed solely for teaching purposes should be performed only with her specific informed consent obtained before her surgery.”<sup>38</sup>
- The Association of American Medical Colleges reversing its prior policy position, offered that “performing pelvic examinations on women under anesthesia, without their knowledge or approval ... is unethical and unacceptable.”<sup>39</sup>

California, Hawaii, Illinois, Iowa, Maryland, Oregon, Utah, and Virginia prohibit unauthorized pelvic examinations.<sup>40</sup>

### III. Effect of Proposed Changes:

#### Section 1 – Definitions, Contract Requirements, and Best Practices

This bill creates s. 383.61, F.S., which requires a commissioning party or donor to enter in to a written contract before donating reproductive material and requires the establishment of best practices for the use of assisted reproductive technology.

#### *Definitions*

The bill defines the following terms:

- “Assisted reproductive technology” means those procreative procedures that involve the storage or laboratory handling of human eggs, pre-embryos, or sperm, including, but not limited to, in vitro fertilization embryo transfer, gamete intrafallopian transfer, pronuclear state transfer, tubal embryo transfer, and zygote intrafallopian transfer.
- “Commissioning party” means the intended parent or parents of a child who will be conceived by means of assisted reproductive technology.
- “Donor” means a person who donates reproductive material, regardless of whether for personal use or compensation.
- “Donor bank” means any facility that collects reproductive material from donors for use by a fertility clinic.
- “Egg” means the unfertilized female reproductive cell.

<sup>37</sup> AMA Council on Ethical and Judicial Affairs, *Medical Student Involvement in Patient Care: Report of the Council on Ethical and Judicial Affairs*, AMA Journal of Ethics (March 2001), available at <https://journalofethics.ama-assn.org/article/medical-student-involvement-patient-care-report-council-ethical-and-judicial-affairs/2001-03> (last visited February 18, 2020).

<sup>38</sup> American College of Obstetricians and Gynecologists, Committee on Ethics, *Professional Responsibilities in Obstetric-Gynecologic Medical Education and Training*, (August 2011), available at <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Ethics/Professional-Responsibilities-in-Obstetric-Gynecologic-Medical-Education-and-Training?IsMobileSet=false> (last visited February 18, 2020).

<sup>39</sup> Robin Fretwell Wilson, *Autonomy Suspended: Using Female Patients to Teach Intimate Exams Without Their Knowledge or Consent*, 8 J OF HEALTH CARE LAW AND POLICY 240, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=880120](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=880120) (last visited February 18, 2020).

<sup>40</sup> Lorelei Laird, *Pelvic Exams Performed without Patients’ Permission Spur New Legislation*, ABA JOURNAL (September 2019), available at <http://www.abajournal.com/magazine/article/examined-while-unconscious> (last visited February 18, 2020).

- “Fertility clinic” means a facility in which reproductive materials are subject to assisted reproductive technology for the purpose of being transferred into the body of a recipient.
- “Health care practitioner” has the same meaning as provided in s. 456.001, F.S.
- “Preembryo” means the product of fertilization of an egg by a sperm until the appearance of the embryonic axis.
- “Recipient” means a person who has a donor’s reproductive material transferred into her body.
- “Reproductive material” means any human “egg,” “preembryo,” or “sperm.”
- “Reproductive storage facility” means a facility in which reproductive materials are stored until they are transferred into the body of a recipient using assisted reproductive technology.
- “Sperm” means the male reproductive cell.

### ***Contract Requirements***

Additionally, s. 383.61, F.S., requires a commissioning party or donor to contract with a donor bank, fertility clinic, health care practitioner, or reproductive storage facility before donating reproductive material. At a minimum, the contract must indicate what must be done with the reproductive material if:

- The donor dies or becomes incapacitated;
- A designated recipient for the donation dies or becomes incapacitated;
- The commissioning party separate or their marriage is dissolved;
- One member of the commissioning party dies or becomes incapacitated;
- The reproductive material is unused, including whether it may be disposed of, offered to a different recipient, or donated to science; and
- Any other unforeseen circumstance occurs.

The above-named entities must ensure that each donation is clearly labeled according to the terms of the contract and must ensure that the donation is transferred, returned, disposed of, or stored according to the terms of the contract.

### ***Best Practice Policies***

This bill provides that by January 1, 2021, donor banks, fertility clinics, health care practitioners, and reproductive storage facilities must establish, and annually submit best practices, which are consistent with 42 U.S.C. part 263a(f), to the appropriate licensing agency or department for review. Donor banks, fertility clinics, health care practitioners, and reproductive storage facilities must clearly label reproductive material, comply with the terms of the contract, and maintain records for a minimum of 30 years. The bill expressly prohibits a health care practitioner from transferring or inseminating a recipient or causing a recipient to have transferred into her body or be inseminated with the reproductive material of the health care practitioner.

### **Sections 2, 3, 5, and 6 – Disciplinary Actions and the Immediate Suspension of a License**

This bill amends ss. 456.072, 458.331, or 459.015, F.S., to add new grounds for discipline of health care practitioners. Health care practitioners who intentionally transfer into or inseminate a recipient with, or cause a recipient to have transferred into her body or be inseminated with the health care practitioner’s reproductive material, or is found in violation of the contract or best

practice policies, including proper labeling and maintenance of records, are subject to penalties provided in ss. 456.072, 458.331, or 459.015, F.S., as appropriate.

The bill amends section 456.074(1), F.S., to require the Department of Health to issue an emergency order suspending the license of a practitioner who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to reproductive battery.

### **Section 7 – Reproductive Battery**

This bill creates s. 784.086, F.S., establishing the crime of reproductive battery. It is a third degree felony<sup>41</sup> for a health care practitioner to intentionally transfer into the body of a recipient the reproductive material of a donor or any object containing the reproductive material of a donor, knowing that the recipient has not consented to the use of the material of that donor. It is a second degree felony<sup>42</sup> if the health care practitioner uses his or her own reproductive material, unless the recipient has provided written consent to the use of the health care practitioner's reproductive material.

The statute of limitations for a third or second degree felony is generally three years.<sup>43</sup> The bill provides that the statute of limitations for reproductive battery does not begin to run until the violation is discovered and reported to law enforcement or any other governmental agency. It is not a defense to the crime of reproductive battery that the recipient consented to an anonymous donor.

### **Section 4 – Pelvic Examinations**

This bill creates s. 456.51, F.S., providing that a health care practitioner must have the written consent of a patient or a patient's legal representative to perform a pelvic examination. A health care practitioner may conduct a pelvic examination without written consent if:

- A court orders the performance of the examination for the collection of evidence;
- The examination is immediately necessary to avert a serious risk of imminent, substantial, and irreversible physical impairment of a major bodily function; or
- The examination is indicated in the standard care for a procedure that the patient has consented to.

This bill is effective July 1, 2020.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

<sup>41</sup> A third degree felony is punishable by up to five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

<sup>42</sup> A second degree felony is punishable by up to 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

<sup>43</sup> Section 775.15(2)(b), F.S.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

This bill creates a third degree felony for a health care practitioner to intentionally transfer into the body of a recipient the reproductive material of a donor knowing that the recipient has not consented to the use of that donor's reproductive material. It is a second degree felony if the health care practitioner uses his or her own reproductive material, unless the recipient provides written consent. Because this bill creates new crimes, it may have a positive indeterminate prison bed impact (unquantifiable positive prison bed impact).

Additionally, this bill may have an indeterminate fiscal impact on the DOH or the appropriate licensing agency for reviewing best practice policies and implementing disciplinary action for violations.

**VI. Technical Deficiencies:**

The bill appears to contradict itself on the issue of whether a health care practitioner may be a donor of reproductive material. Section 7, provides that a health care practitioner is not subject to criminal penalties for being a donor if the recipient provides written consent for the use of the health care practitioner's reproductive material. However, section 1 prohibits, without exception, from transferring his or her reproductive material into any recipient.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 383.61, 456.51, and 784.086.

This bill substantially amends the following sections of the Florida Statutes: 456.072, 456.074, 458.331, and 459.015.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Rules on February 26, 2020:**

The committee substitute refines the provisions of the underlying bill by:

- Expanding the bill’s purposes and requirements to include reproductive storage facilities.
- Removing the authority for AHCA to perform annual inspections of donor banks and fertility clinics.
- Revising provisions in the bill that relate to consent for pelvic examinations.
- Allowing the use of a health care practitioner’s reproductive material only when the recipient provides written consent.

**CS by Criminal Justice on February 18, 2020:**

The committee substitute:

- Defines the terms, “assisted reproductive technology,” “commissioning party,” “donor,” “donor bank,” “egg,” “fertility clinic,” “health care practitioner,” “preembryo,” “recipient,” “reproductive material,” and “sperm.”
- Requires a commissioning party or donor of reproductive material to enter into a contract with a donor bank, fertility clinic, or health care practitioner, and provides for minimum contract requirements.
- Requires that donor banks, fertility clinics, and health care practitioners establish best practice policies, consistent with federal law. Additionally, requirements for labeling and maintenance of records is provided in the bill.
- Expressly prohibits a health care practitioner from inseminating or implanting a recipient with the reproductive material of the health care practitioner.
- Requires the AHCA to annually inspect all donor banks and fertility clinics.
- Provides penalties when donor banks, fertility clinics or health care professionals are found in violation of the best practices.
- Creates the crime of reproductive battery. It is a third degree felony for a health care practitioner to intentionally penetrate the vagina of a recipient with the reproductive material of a donor that the patient has not consented to. It is a second degree felony if the health care practitioner uses his or her own reproductive material.
- Requires a health care practitioner to obtain written consent to perform a pelvic exam.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/27/2020	.	
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The Committee on Rules (Book) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 42 - 186

and insert:

(a) "Assisted reproductive technology" means those procreative procedures that involve the storage or laboratory handling of human eggs, preembryos, or sperm, including, but not limited to, in vitro fertilization embryo transfer, gamete intrafallopian transfer, pronuclear stage transfer, tubal embryo transfer, and zygote intrafallopian transfer.

(b) "Commissioning party" means the intended parent or



12 parents of a child who will be conceived by means of assisted  
13 reproductive technology.

14 (c) "Donor" means a person who donates reproductive  
15 material, regardless of whether for personal use or  
16 compensation.

17 (d) "Donor bank" means any facility that collects  
18 reproductive material from donors for use by a fertility clinic.

19 (e) "Egg" means the unfertilized female reproductive cell.

20 (f) "Fertility clinic" means a facility in which  
21 reproductive materials are subject to assisted reproductive  
22 technology for the purpose of being transferred into the body of  
23 a recipient.

24 (g) "Health care practitioner" has the same meaning as in  
25 s. 456.001.

26 (h) "Preembryo" means the product of fertilization of an  
27 egg by a sperm until the appearance of the embryonic axis.

28 (i) "Recipient" means a person who has a donor's  
29 reproductive material transferred into her body.

30 (j) "Reproductive material" means any human egg, preembryo,  
31 or sperm.

32 (k) "Reproductive storage facility" means a facility in  
33 which reproductive materials are stored until such time that  
34 they are transferred into the body of a recipient using assisted  
35 reproductive technology.

36 (l) "Sperm" means the male reproductive cell.

37 (2) (a) CONTRACT REQUIREMENTS.—A commissioning party or  
38 donor must enter into a contract with the donor bank, fertility  
39 clinic, health care practitioner, or reproductive storage  
40 facility before he or she may make a donation of reproductive



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41 material. The contract must, at a minimum, indicate what must be  
42 done with the reproductive material if any of the following  
43 occurs:

44 1. The donor dies or becomes incapacitated.

45 2. A designated recipient for the donation dies or becomes  
46 incapacitated.

47 3. The commissioning party separates or the party's  
48 marriage is dissolved.

49 4. One member of the commissioning party dies or becomes  
50 incapacitated.

51 5. The reproductive material is unused, including whether  
52 it may be disposed of, offered to a different recipient, or  
53 donated to science.

54 6. Any other unforeseen circumstance.

55 (b) The donor bank, fertility clinic, health care  
56 practitioner, or reproductive storage facility must ensure that  
57 each donation is clearly labeled according to the terms of each  
58 donor or commissioning party's contract.

59 (c) The donor bank, fertility clinic, health care  
60 practitioner, or reproductive storage facility must ensure that  
61 the donation is transferred to a recipient, returned, disposed  
62 of, or stored according to the terms of the contract.

63 (3) BEST PRACTICE POLICIES.—

64 (a) By January 1, 2021, each donor bank, fertility clinic,  
65 health care practitioner, and reproductive storage facility that  
66 provides assisted reproductive technology in this state shall  
67 develop written best practice policies consistent with 42 U.S.C.  
68 s. 263a(f).

69 (b) The best practice policies must be submitted to the



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70 appropriate licensing agency or department annually for review.

71 (c) All reproductive material stored by a donor bank,  
72 fertility clinic, health care practitioner, or reproductive  
73 storage facility must be clearly labeled.

74 (d) A donor bank, fertility clinic, health care  
75 practitioner, or reproductive storage facility must comply with  
76 the terms of the contract pursuant to subsection (2).

77 (e) A donor bank, fertility clinic, health care  
78 practitioner, or reproductive storage facility must maintain all  
79 records for at least 30 years.

80 (f) A health care practitioner may not transfer or  
81 inseminate a recipient or cause a recipient to have transferred  
82 into her body or be inseminated with the reproductive material  
83 of the health care practitioner.

84 Section 2. Paragraphs (pp) and (qq) are added to subsection  
85 (1) of section 456.072, Florida Statutes, to read:

86 456.072 Grounds for discipline; penalties; enforcement.—

87 (1) The following acts shall constitute grounds for which  
88 the disciplinary actions specified in subsection (2) may be  
89 taken:

90 (pp) Intentionally transferring into a recipient or  
91 inseminating a recipient with, or causing a recipient to have  
92 transferred into her body or be inseminated with, the  
93 reproductive material, as defined in s. 383.61, of a donor  
94 without the recipient's consent.

95 (qq) Violating s. 383.61.

96 Section 3. Subsection (1) of section 456.074, Florida  
97 Statutes, is amended to read:

98 456.074 Certain health care practitioners; immediate



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99 suspension of license.—

100 (1) The department shall issue an emergency order  
101 suspending the license of any person licensed under chapter 458,  
102 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,  
103 chapter 464, chapter 465, chapter 466, or chapter 484 who pleads  
104 guilty to, is convicted or found guilty of, or who enters a plea  
105 of nolo contendere to, regardless of adjudication, to:

106 (a) A felony under chapter 409, chapter 817, or chapter 893  
107 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396;  
108 ~~or~~

109 (b) A misdemeanor or felony under 18 U.S.C. s. 669, ss.  
110 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s.  
111 1349, or s. 1518 or 42 U.S.C. ss. 1320a-7b, relating to the  
112 Medicaid program; or

113 (c) A felony under s. 784.086, relating to a reproductive  
114 battery.

115 Section 3. Section 456.51, Florida Statutes, is created to  
116 read:

117 456.51 Health care practitioners; consent for pelvic  
118 examinations.—

119 (1) As used in this section, the term "pelvic examination"  
120 means the series of tasks that comprise an examination of the  
121 vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or  
122 external pelvic tissue or organs using any combination of  
123 modalities, which may include, but need not be limited to, the  
124 health care provider's gloved hand or instrumentation, in  
125 accordance with the prevailing professional standard of care for  
126 the health care practitioner as specified in s. 766.102.

127 (2) A health care practitioner may not perform a pelvic



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128 examination on a patient without the written consent of the  
129 patient or the patient's legal representative executed specific  
130 to, and expressly identifying, the pelvic examination, unless:

131 (a) A court orders performance of the pelvic examination  
132 for the collection of evidence;

133 (b) The pelvic examination is immediately necessary to  
134 avert a serious risk of imminent, substantial, and irreversible  
135 physical impairment of a major bodily function of the patient;  
136 or

137 (c) The pelvic exam is indicated in the standard care for a  
138 procedure that the patient has consented to.

139 Section 4. Paragraphs (ww) and (xx) are added to subsection  
140 (1) of section 458.331, Florida Statutes, to read:

141 458.331 Grounds for disciplinary action; action by the  
142 board and department.—

143 (1) The following acts constitute grounds for denial of a  
144 license or disciplinary action, as specified in s. 456.072(2):

145 (ww) Intentionally transferring into a recipient or  
146 inseminating a recipient with, or causing a recipient to have  
147 transferred into her body or be inseminated with, the  
148 reproductive material, as defined in s. 383.61, of a donor  
149 without the recipient's consent.

150 (xx) Violating s. 383.61.

151 Section 5. Paragraphs (yy) and (zz) are added to subsection  
152 (1) of section 459.015, Florida Statutes, to read:

153 459.015 Grounds for disciplinary action; action by the  
154 board and department.—

155 (1) The following acts constitute grounds for denial of a  
156 license or disciplinary action, as specified in s. 456.072(2):



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157       (yy) Intentionally transferring into a recipient or  
158 inseminating a recipient with, or causing a recipient to have  
159 transferred into her body or be inseminated with, the  
160 reproductive material, as defined in s. 383.61, of a donor  
161 without the recipient's consent.

162       (zz) Violating s. 383.61.

163       Section 6. Section 784.086, Florida Statutes, is created to  
164 read:

165       784.086 Reproductive battery.—

166       (1) As used in this section, the term:

167       (a) "Donor" has the same meaning as in s. 383.61.

168       (b) "Health care practitioner" has the same meaning as in  
169 s. 456.001.

170       (c) "Recipient" has the same meaning as in s. 383.61.

171       (d) "Reproductive material" has the same meaning as in s.  
172 383.61.

173       (2) (a) A health care practitioner may not intentionally  
174 transfer into the body of a recipient the reproductive material  
175 of a donor or any object containing the reproductive material of  
176 a donor, knowing that the recipient has not consented to the use  
177 of the reproductive material from that donor.

178       (b) If a recipient has requested the reproductive material  
179 of an anonymous donor, the health care practitioner may not  
180 donate the health care practitioner's reproductive material to  
181 the recipient, unless the recipient has provided written consent  
182 to the use of the reproductive material from that health care  
183 practitioner.

184       (c) A health care practitioner who violates this section  
185



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186 ===== T I T L E A M E N D M E N T =====

187 And the title is amended as follows:

188 Delete lines 5 - 30

189 and insert:

190 donor bank, fertility clinic, health care  
191 practitioner, or reproductive storage facility before  
192 donating reproductive material; providing requirements  
193 for the contract; requiring certain donor banks,  
194 fertility clinics, health care practitioners, and  
195 reproductive storage facilities to develop certain  
196 written best practice policies by a specified date;  
197 requiring the annual submission of such written  
198 policies to the appropriate licensing agency or the  
199 Department of Health; providing labeling, contract  
200 compliance, and record retention requirements;  
201 prohibiting a health care practitioner from implanting  
202 or inseminating a recipient with the health care  
203 practitioner's own reproductive material; amending s.  
204 456.072, F.S.; providing grounds for disciplinary  
205 action; amending s. 456.074, F.S.; requiring the  
206 department to immediately suspend the license of  
207 certain health care practitioners under certain  
208 circumstances; creating s. 456.51, F.S.; defining the  
209 term "pelvic examination"; prohibiting a health care  
210 practitioner from performing a pelvic examination on a  
211 patient without first obtaining the written consent of  
212 the patient or the patient's legal representative;  
213 providing exceptions; amending ss. 458.331 and  
214 459.015, F.S.; providing grounds for disciplinary



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215       action; creating s. 784.086, F.S.; defining terms;  
216       establishing the criminal offense of reproductive  
217       battery; providing an exception; providing criminal



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/25/2020	.	
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The Committee on Rules (Book) recommended the following:

1           **Senate Substitute for Amendment (362874) (with title**  
2 **amendment)**

3  
4           Delete lines 42 - 189

5 and insert:

6           (a) "Assisted reproductive technology" means those  
7 procreative procedures that involve the storage or laboratory  
8 handling of human eggs, preembryos, or sperm, including, but not  
9 limited to, in vitro fertilization embryo transfer, gamete  
10 intrafallopian transfer, pronuclear stage transfer, tubal embryo  
11 transfer, and zygote intrafallopian transfer.



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12 (b) "Commissioning party" means the intended parent or  
13 parents of a child who will be conceived by means of assisted  
14 reproductive technology.

15 (c) "Donor" means a person who donates reproductive  
16 material, regardless of whether for personal use or  
17 compensation.

18 (d) "Donor bank" means any facility that collects  
19 reproductive material from donors for use by a fertility clinic.

20 (e) "Egg" means the unfertilized female reproductive cell.

21 (f) "Fertility clinic" means a facility in which  
22 reproductive materials are subject to assisted reproductive  
23 technology for the purpose of being transferred into the body of  
24 a recipient.

25 (g) "Health care practitioner" has the same meaning as in  
26 s. 456.001.

27 (h) "Preembryo" means the product of fertilization of an  
28 egg by a sperm until the appearance of the embryonic axis.

29 (i) "Recipient" means a person who has a donor's  
30 reproductive material transferred into her body.

31 (j) "Reproductive material" means any human egg, preembryo,  
32 or sperm.

33 (k) "Reproductive storage facility" means a facility in  
34 which reproductive materials are stored until such time that  
35 they are transferred into the body of a recipient using assisted  
36 reproductive technology.

37 (l) "Sperm" means the male reproductive cell.

38 (2) (a) CONTRACT REQUIREMENTS.—A commissioning party or  
39 donor must enter into a contract with the donor bank, fertility  
40 clinic, health care practitioner, or reproductive storage



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41 facility before he or she may make a donation of reproductive  
42 material. The contract must, at a minimum, indicate what must be  
43 done with the reproductive material if any of the following  
44 occurs:

45 1. The donor dies or becomes incapacitated.

46 2. A designated recipient for the donation dies or becomes  
47 incapacitated.

48 3. The commissioning party separates or the party's  
49 marriage is dissolved.

50 4. One member of the commissioning party dies or becomes  
51 incapacitated.

52 5. The reproductive material is unused, including whether  
53 it may be disposed of, offered to a different recipient, or  
54 donated to science.

55 6. Any other unforeseen circumstance.

56 (b) The donor bank, fertility clinic, health care  
57 practitioner, or reproductive storage facility must ensure that  
58 each donation is clearly labeled according to the terms of each  
59 donor or commissioning party's contract.

60 (c) The donor bank, fertility clinic, health care  
61 practitioner, or reproductive storage facility must ensure that  
62 the donation is transferred to a recipient, returned, disposed  
63 of, or stored according to the terms of the contract.

64 (3) BEST PRACTICE POLICIES.—

65 (a) By January 1, 2021, each donor bank, fertility clinic,  
66 health care practitioner, and reproductive storage facility that  
67 provides assisted reproductive technology in this state shall  
68 develop written best practice policies consistent with 42 U.S.C.  
69 s. 263a(f).



70 (b) The best practice policies must be submitted to the  
71 appropriate licensing agency or department annually for review.

72 (c) All reproductive material stored by a donor bank,  
73 fertility clinic, health care practitioner, or reproductive  
74 storage facility must be clearly labeled.

75 (d) A donor bank, fertility clinic, health care  
76 practitioner, or reproductive storage facility must comply with  
77 the terms of the contract pursuant to subsection (2).

78 (e) A donor bank, fertility clinic, health care  
79 practitioner, or reproductive storage facility must maintain all  
80 records for at least 30 years.

81 (f) A health care practitioner may not transfer or  
82 inseminate a recipient or cause a recipient to have transferred  
83 into her body or be inseminated with the reproductive material  
84 of the health care practitioner.

85 Section 2. Paragraphs (pp) and (qq) are added to subsection  
86 (1) of section 456.072, Florida Statutes, to read:

87 456.072 Grounds for discipline; penalties; enforcement.—

88 (1) The following acts shall constitute grounds for which  
89 the disciplinary actions specified in subsection (2) may be  
90 taken:

91 (pp) Intentionally transferring into a recipient or  
92 inseminating a recipient with, or causing a recipient to have  
93 transferred into her body or be inseminated with, the  
94 reproductive material, as defined in s. 383.61, of a donor  
95 without the recipient's consent.

96 (qq) Violating s. 383.61.

97 Section 3. Subsection (1) of section 456.074, Florida  
98 Statutes, is amended to read:



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99 456.074 Certain health care practitioners; immediate  
100 suspension of license.—

101 (1) The department shall issue an emergency order  
102 suspending the license of any person licensed under chapter 458,  
103 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,  
104 chapter 464, chapter 465, chapter 466, or chapter 484 who pleads  
105 guilty to, is convicted or found guilty of, or who enters a plea  
106 of nolo contendere to, regardless of adjudication, to:

107 (a) A felony under chapter 409, chapter 817, or chapter 893  
108 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396;  
109 ~~or~~

110 (b) A misdemeanor or felony under 18 U.S.C. s. 669, ss.  
111 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s.  
112 1349, or s. 1518 or 42 U.S.C. ss. 1320a-7b, relating to the  
113 Medicaid program; or

114 (c) A felony under s. 784.086, relating to a reproductive  
115 battery.

116 Section 4. Section 456.51, Florida Statutes, is created to  
117 read:

118 456.51 Health care practitioners; consent for pelvic  
119 examinations.—

120 (1) As used in this section, the term "pelvic examination"  
121 means the series of tasks that comprise an examination of the  
122 vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or  
123 external pelvic tissue or organs using any combination of  
124 modalities, which may include, but need not be limited to, the  
125 health care provider's gloved hand or instrumentation, in  
126 accordance with the prevailing professional standard of care for  
127 the health care practitioner as specified in s. 766.102.



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128       (2) A health care practitioner may not perform a pelvic  
129 examination on a patient without the written consent of the  
130 patient or the patient's legal representative executed specific  
131 to, and expressly identifying, the pelvic examination, unless:

132       (a) A court orders performance of the pelvic examination  
133 for the collection of evidence;

134       (b) The pelvic examination is immediately necessary to  
135 avert a serious risk of imminent, substantial, and irreversible  
136 physical impairment of a major bodily function of the patient;  
137 or

138       (c) The pelvic exam is indicated in the standard care for a  
139 procedure that the patient has consented to.

140       Section 5. Paragraphs (ww) and (xx) are added to subsection  
141 (1) of section 458.331, Florida Statutes, to read:

142       458.331 Grounds for disciplinary action; action by the  
143 board and department.—

144       (1) The following acts constitute grounds for denial of a  
145 license or disciplinary action, as specified in s. 456.072(2):

146       (ww) Intentionally transferring into a recipient or  
147 inseminating a recipient with, or causing a recipient to have  
148 transferred into her body or be inseminated with, the  
149 reproductive material, as defined in s. 383.61, of a donor  
150 without the recipient's consent.

151       (xx) Violating s. 383.61.

152       Section 6. Paragraphs (yy) and (zz) are added to subsection  
153 (1) of section 459.015, Florida Statutes, to read:

154       459.015 Grounds for disciplinary action; action by the  
155 board and department.—

156       (1) The following acts constitute grounds for denial of a



157 license or disciplinary action, as specified in s. 456.072(2):  
158 (yy) Intentionally transferring into a recipient or  
159 inseminating a recipient with, or causing a recipient to have  
160 transferred into her body or be inseminated with, the  
161 reproductive material, as defined in s. 383.61, of a donor  
162 without the recipient's consent.

163 (zz) Violating s. 383.61.

164 Section 7. Section 784.086, Florida Statutes, is created to  
165 read:

166 784.086 Reproductive battery.—

167 (1) As used in this section, the term:

168 (a) "Donor" has the same meaning as in s. 383.61.

169 (b) "Health care practitioner" has the same meaning as in  
170 s. 456.001.

171 (c) "Recipient" has the same meaning as in s. 383.61.

172 (d) "Reproductive material" has the same meaning as in s.  
173 383.61.

174 (2) (a) A health care practitioner may not intentionally  
175 transfer into the body of a recipient the reproductive material  
176 of a donor or any object containing the reproductive material of  
177 a donor, knowing that the recipient has not consented to the use  
178 of the reproductive material from that donor. A health care  
179 practitioner who violates this paragraph commits a felony of the  
180 third degree, punishable as provided in s. 775.082, s. 775.083,  
181 or s. 775.084.

182 (b) If a recipient has requested the reproductive material  
183 of an anonymous donor, the health care practitioner may not  
184 donate the health care practitioner's reproductive material to  
185 the recipient, unless the recipient has provided written consent



186 to the use of the reproductive material from that health care  
187 practitioner. A health care practitioner who violates this  
188 paragraph and is the donor of the reproductive material commits  
189 a felony of the second degree, punishable as provided in s.  
190 775.082, s. 775.083, or s. 775.084.

191  
192  
193 ===== T I T L E A M E N D M E N T =====

194 And the title is amended as follows:

195 Delete lines 5 - 30

196 and insert:

197 donor bank, fertility clinic, health care  
198 practitioner, or reproductive storage facility before  
199 donating reproductive material; providing requirements  
200 for the contract; requiring certain donor banks,  
201 fertility clinics, health care practitioners, and  
202 reproductive storage facilities to develop certain  
203 written best practice policies by a specified date;  
204 requiring the annual submission of such written  
205 policies to the appropriate licensing agency or the  
206 Department of Health; providing labeling, contract  
207 compliance, and record retention requirements;  
208 prohibiting a health care practitioner from implanting  
209 or inseminating a recipient with the health care  
210 practitioner's own reproductive material; amending s.  
211 456.072, F.S.; providing grounds for disciplinary  
212 action; amending s. 456.074, F.S.; requiring the  
213 department to immediately suspend the license of  
214 certain health care practitioners under certain



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215 circumstances; creating s. 456.51, F.S.; defining the  
216 term "pelvic examination"; prohibiting a health care  
217 practitioner from performing a pelvic examination on a  
218 patient without first obtaining the written consent of  
219 the patient or the patient's legal representative;  
220 providing exceptions; amending ss. 458.331 and  
221 459.015, F.S.; providing grounds for disciplinary  
222 action; creating s. 784.086, F.S.; defining terms;  
223 establishing the criminal offense of reproductive  
224 battery; providing an exception; providing criminal



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2020	.	
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The Committee on Rules (Book) recommended the following:

1           **Senate Substitute for Amendment (362874) (with title**  
2 **amendment)**

3  
4           Delete lines 42 - 189

5 and insert:

6           (a) "Assisted reproductive technology" means those  
7 procreative procedures that involve the storage or laboratory  
8 handling of human eggs, preembryos, or sperm, including, but not  
9 limited to, in vitro fertilization embryo transfer, gamete  
10 intrafallopian transfer, pronuclear stage transfer, tubal embryo  
11 transfer, and zygote intrafallopian transfer.



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12           (b) "Commissioning party" means the intended parent or  
13 parents of a child who will be conceived by means of assisted  
14 reproductive technology.

15           (c) "Donor" means a person who donates reproductive  
16 material, regardless of whether for personal use or  
17 compensation.

18           (d) "Donor bank" means any facility that collects  
19 reproductive material from donors for use by a fertility clinic.

20           (e) "Egg" means the unfertilized female reproductive cell.

21           (f) "Fertility clinic" means a facility in which  
22 reproductive materials are subject to assisted reproductive  
23 technology for the purpose of being transferred into the body of  
24 a recipient.

25           (g) "Health care practitioner" has the same meaning as in  
26 s. 456.001.

27           (h) "Preembryo" means the product of fertilization of an  
28 egg by a sperm until the appearance of the embryonic axis.

29           (i) "Recipient" means a person who has a donor's  
30 reproductive material transferred into her body.

31           (j) "Reproductive material" means any human egg, preembryo,  
32 or sperm.

33           (k) "Reproductive storage facility" means a facility in  
34 which reproductive materials are stored until such time that  
35 they are transferred into the body of a recipient using assisted  
36 reproductive technology.

37           (l) "Sperm" means the male reproductive cell.

38           (2) (a) CONTRACT REQUIREMENTS.—A commissioning party or  
39 donor must enter into a contract with the donor bank, fertility  
40 clinic, health care practitioner, or reproductive storage



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41 facility before he or she may make a donation of reproductive  
42 material. The contract must, at a minimum, indicate what must be  
43 done with the reproductive material if any of the following  
44 occurs:

45 1. The donor dies or becomes incapacitated.

46 2. A designated recipient for the donation dies or becomes  
47 incapacitated.

48 3. The commissioning party separates or the party's  
49 marriage is dissolved.

50 4. One member of the commissioning party dies or becomes  
51 incapacitated.

52 5. The reproductive material is unused, including whether  
53 it may be disposed of, offered to a different recipient, or  
54 donated to science.

55 6. Any other unforeseen circumstance.

56 (b) The donor bank, fertility clinic, health care  
57 practitioner, or reproductive storage facility must ensure that  
58 each donation is clearly labeled according to the terms of each  
59 donor or commissioning party's contract.

60 (c) The donor bank, fertility clinic, health care  
61 practitioner, or reproductive storage facility must ensure that  
62 the donation is transferred to a recipient, returned, disposed  
63 of, or stored according to the terms of the contract.

64 (3) BEST PRACTICE POLICIES.—

65 (a) By January 1, 2021, each donor bank, fertility clinic,  
66 health care practitioner, and reproductive storage facility that  
67 provides assisted reproductive technology in this state shall  
68 develop written best practice policies consistent with 42 U.S.C.  
69 s. 263a(f).



70       (b) The best practice policies must be submitted to the  
71 appropriate licensing agency or department annually for review.

72       (c) All reproductive material stored by a donor bank,  
73 fertility clinic, health care practitioner, or reproductive  
74 storage facility must be clearly labeled.

75       (d) A donor bank, fertility clinic, health care  
76 practitioner, or reproductive storage facility must comply with  
77 the terms of the contract pursuant to subsection (2).

78       (e) A donor bank, fertility clinic, health care  
79 practitioner, or reproductive storage facility must maintain all  
80 records for at least 30 years.

81       (f) A health care practitioner may not transfer or  
82 inseminate a recipient or cause a recipient to have transferred  
83 into her body or be inseminated with the reproductive material  
84 of the health care practitioner.

85       Section 2. Paragraphs (pp) and (qq) are added to subsection  
86 (1) of section 456.072, Florida Statutes, to read:

87       456.072 Grounds for discipline; penalties; enforcement.—

88       (1) The following acts shall constitute grounds for which  
89 the disciplinary actions specified in subsection (2) may be  
90 taken:

91       (pp) Intentionally transferring into a recipient or  
92 inseminating a recipient with, or causing a recipient to have  
93 transferred into her body or be inseminated with, the  
94 reproductive material, as defined in s. 383.61, of a donor  
95 without the recipient's consent.

96       (qq) Violating s. 383.61.

97       Section 3. Subsection (1) of section 456.074, Florida  
98 Statutes, is amended to read:



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99 456.074 Certain health care practitioners; immediate  
100 suspension of license.—

101 (1) The department shall issue an emergency order  
102 suspending the license of any person licensed under chapter 458,  
103 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,  
104 chapter 464, chapter 465, chapter 466, or chapter 484 who pleads  
105 guilty to, is convicted or found guilty of, or who enters a plea  
106 of nolo contendere to, regardless of adjudication, to:

107 (a) A felony under chapter 409, chapter 817, or chapter 893  
108 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396;  
109 ~~or~~

110 (b) A misdemeanor or felony under 18 U.S.C. s. 669, ss.  
111 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s.  
112 1349, or s. 1518 or 42 U.S.C. ss. 1320a-7b, relating to the  
113 Medicaid program; or

114 (c) A felony under s. 784.086, relating to a reproductive  
115 battery.

116 Section 4. Section 456.51, Florida Statutes, is created to  
117 read:

118 456.51 Health care practitioners; consent for pelvic  
119 examinations.—

120 (1) As used in this section, the term "pelvic examination"  
121 means the series of tasks that comprise an examination of the  
122 vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or  
123 external pelvic tissue or organs using any combination of  
124 modalities, which may include, but need not be limited to, the  
125 health care provider's gloved hand or instrumentation, in  
126 accordance with the prevailing professional standard of care for  
127 the health care practitioner as specified in s. 766.102.



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128       (2) A health care practitioner may not perform a pelvic  
129 examination on a patient without the written consent of the  
130 patient or the patient's legal representative executed specific  
131 to, and expressly identifying, the pelvic examination, unless:

132       (a) A court orders performance of the pelvic examination  
133 for the collection of evidence;

134       (b) The pelvic examination is immediately necessary to  
135 avert a serious risk of imminent, substantial, and irreversible  
136 physical impairment of a major bodily function of the patient;  
137 or

138       (c) The pelvic exam is indicated in the standard care for a  
139 procedure that the patient has consented to.

140       Section 5. Paragraphs (ww) and (xx) are added to subsection  
141 (1) of section 458.331, Florida Statutes, to read:

142       458.331 Grounds for disciplinary action; action by the  
143 board and department.—

144       (1) The following acts constitute grounds for denial of a  
145 license or disciplinary action, as specified in s. 456.072(2):

146       (ww) Intentionally transferring into a recipient or  
147 inseminating a recipient with, or causing a recipient to have  
148 transferred into her body or be inseminated with, the  
149 reproductive material, as defined in s. 383.61, of a donor  
150 without the recipient's consent.

151       (xx) Violating s. 383.61.

152       Section 6. Paragraphs (yy) and (zz) are added to subsection  
153 (1) of section 459.015, Florida Statutes, to read:

154       459.015 Grounds for disciplinary action; action by the  
155 board and department.—

156       (1) The following acts constitute grounds for denial of a



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157 license or disciplinary action, as specified in s. 456.072(2):  
158 (yy) Intentionally transferring into a recipient or  
159 inseminating a recipient with, or causing a recipient to have  
160 transferred into her body or be inseminated with, the  
161 reproductive material, as defined in s. 383.61, of a donor  
162 without the recipient's consent.

163 (zz) Violating s. 383.61.

164 Section 7. Section 784.086, Florida Statutes, is created to  
165 read:

166 784.086 Reproductive battery.—

167 (1) As used in this section, the term:

168 (a) "Donor" has the same meaning as in s. 383.61.

169 (b) "Health care practitioner" has the same meaning as in  
170 s. 456.001.

171 (c) "Recipient" has the same meaning as in s. 383.61.

172 (d) "Reproductive material" has the same meaning as in s.  
173 383.61.

174 (2) A health care practitioner may not intentionally  
175 transfer into the body of a recipient the reproductive material  
176 of a donor or any object containing the reproductive material of  
177 a donor, knowing that the recipient has not consented to the use  
178 of the reproductive material from that donor.

179 (a) A health care practitioner who violates this subsection  
180 commits a felony of the third degree, punishable as provided in  
181 s. 775.082, s. 775.083, or s. 775.084.

182 (b) A health care practitioner who violates this section  
183 and is the donor of the reproductive material commits a felony  
184 of the second degree, punishable as provided in s. 775.082, s.  
185 775.083, or s. 775.084, unless the recipient has provided



186 written consent to the use of the health care practitioner's  
187 reproductive material.

188  
189 ===== T I T L E A M E N D M E N T =====

190 And the title is amended as follows:

191 Delete lines 5 - 30

192 and insert:

193 donor bank, fertility clinic, health care  
194 practitioner, or reproductive storage facility before  
195 donating reproductive material; providing requirements  
196 for the contract; requiring certain donor banks,  
197 fertility clinics, health care practitioners, and  
198 reproductive storage facilities to develop certain  
199 written best practice policies by a specified date;  
200 requiring the annual submission of such written  
201 policies to the appropriate licensing agency or the  
202 Department of Health; providing labeling, contract  
203 compliance, and record retention requirements;  
204 prohibiting a health care practitioner from implanting  
205 or inseminating a recipient with the health care  
206 practitioner's own reproductive material; amending s.  
207 456.072, F.S.; providing grounds for disciplinary  
208 action; amending s. 456.074, F.S.; requiring the  
209 department to immediately suspend the license of  
210 certain health care practitioners under certain  
211 circumstances; creating s. 456.51, F.S.; defining the  
212 term "pelvic examination"; prohibiting a health care  
213 practitioner from performing a pelvic examination on a  
214 patient without first obtaining the written consent of



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215 the patient or the patient's legal representative;  
216 providing exceptions; amending ss. 458.331 and  
217 459.015, F.S.; providing grounds for disciplinary  
218 action; creating s. 784.086, F.S.; defining terms;  
219 establishing the criminal offense of reproductive  
220 battery; providing an exception; providing criminal

By the Committee on Criminal Justice; and Senators Book and Stewart

591-03834-20

2020698c1

1 A bill to be entitled  
 2 An act relating to reproductive health; creating s.  
 3 383.61, F.S.; defining terms; requiring commissioning  
 4 parties and donors to enter into a contract with a  
 5 donor bank, fertility clinic, or health care  
 6 practitioner before donating reproductive material;  
 7 providing requirements for the contract; requiring  
 8 donor banks, fertility clinics, and health care  
 9 practitioners to develop certain written best practice  
 10 policies by a specified date; requiring the annual  
 11 submission of such written policies to the appropriate  
 12 licensing agency or the Department of Health;  
 13 providing labeling, contract compliance, and record  
 14 retention requirements; prohibiting a health care  
 15 practitioner from implanting or inseminating a  
 16 recipient with the health care practitioner's own  
 17 reproductive material; requiring the Agency for Health  
 18 Care Administration to conduct annual unannounced  
 19 inspections of donor banks and fertility clinics;  
 20 providing penalties; amending s. 456.072, F.S.;  
 21 providing grounds for disciplinary action; creating s.  
 22 456.51, F.S.; defining the term "pelvic examination";  
 23 prohibiting a health care practitioner from performing  
 24 a pelvic examination on a patient without first  
 25 obtaining the written consent of the patient or the  
 26 patient's legal representative; providing exceptions;  
 27 amending ss. 458.331 and 459.015, F.S.; providing  
 28 grounds for disciplinary action; creating s. 784.086,  
 29 F.S.; defining terms; establishing the criminal

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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30 offense of reproductive battery; providing criminal  
 31 penalties; tolling the period of limitations;  
 32 providing that a recipient's consent to an anonymous  
 33 donor is not a defense to the crime of reproductive  
 34 battery; providing an effective date.  
 35

36 Be It Enacted by the Legislature of the State of Florida:

37  
 38 Section 1. Section 383.61, Florida Statutes, is created to  
 39 read:

40 383.61 Assisted reproduction facilities.-  
 41 (1) DEFINITIONS.-As used in this section, the term:  
 42 (a) "Assisted reproductive technology" means those  
 43 procreative procedures that involve the laboratory handling of  
 44 human eggs, preembryos, or sperm, including, but not limited to,  
 45 in vitro fertilization embryo transfer, gamete intrafallopian  
 46 transfer, pronuclear stage transfer, tubal embryo transfer, and  
 47 zygote intrafallopian transfer.  
 48 (b) "Commissioning party" means the intended parent or  
 49 parents of a child who will be conceived by means of assisted  
 50 reproductive technology.  
 51 (c) "Donor" means a person who donates reproductive  
 52 material, regardless of whether for personal use or  
 53 compensation.  
 54 (d) "Donor bank" means any facility that collects  
 55 reproductive material from donors for use by a fertility clinic.  
 56 (e) "Egg" means the unfertilized female reproductive cell.  
 57 (f) "Fertility clinic" means a facility in which  
 58 reproductive materials are subject to assisted reproductive

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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59 technology for the purpose of implantation.

60 (g) "Health care practitioner" has the same meaning as in  
61 s. 456.001.

62 (h) "Preembryo" means the product of fertilization of an  
63 egg by a sperm until the appearance of the embryonic axis.

64 (i) "Recipient" means a person who receives, through  
65 implantation, reproductive material from a donor.

66 (j) "Reproductive material" means any human egg, preembryo,  
67 or sperm.

68 (k) "Sperm" means the male reproductive cell.

69 (2) (a) CONTRACT REQUIREMENTS.—A commissioning party or  
70 donor must enter into a contract with the donor bank, fertility  
71 clinic, or health care practitioner before he or she may make a  
72 donation of reproductive material. The contract must, at a  
73 minimum, indicate what must be done with the reproductive  
74 material if any of the following occurs:

75 1. The donor dies or becomes incapacitated.

76 2. A designated recipient for the donation dies or becomes  
77 incapacitated.

78 3. The commissioning party separates or the party's  
79 marriage is dissolved.

80 4. One member of the commissioning party dies or becomes  
81 incapacitated.

82 5. The reproductive material is unused, including whether  
83 it may be disposed of, offered to a different recipient, or  
84 donated to science.

85 6. Any other unforeseen circumstance.

86 (b) The donor bank, fertility clinic, or health care  
87 practitioner must ensure that each donation is clearly labeled

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88 according to the terms of each donor or commissioning party's  
89 contract.

90 (c) The donor bank, fertility clinic, or health care  
91 practitioner must ensure that the donation is implanted,  
92 returned, disposed of, or stored according to the terms of the  
93 contract.

94 (3) BEST PRACTICE POLICIES.—

95 (a) By January 1, 2021, each donor bank, fertility clinic,  
96 and health care practitioner that provides assisted reproductive  
97 technology in this state shall develop written best practice  
98 policies consistent with 42 U.S.C. s. 263a(f).

99 (b) The best practice policies must be submitted to the  
100 appropriate licensing agency or department annually for review.

101 (c) All reproductive material stored by a donor bank,  
102 fertility clinic, or health care practitioner must be clearly  
103 labeled.

104 (d) A donor bank, fertility clinic, or health care  
105 practitioner must comply with the terms of the contract pursuant  
106 to subsection (2).

107 (e) A donor bank, fertility clinic, or health care  
108 practitioner must maintain all records for at least 30 years.

109 (f) A health care practitioner may not implant or  
110 inseminate a recipient or cause a recipient to be implanted or  
111 inseminated with reproductive material of the health care  
112 practitioner.

113 (4) INSPECTIONS.—The Agency for Health Care Administration  
114 shall perform annual inspections of donor banks and fertility  
115 clinics without notice.

116 (5) PENALTIES.—A donor bank or fertility clinic in

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117 violation of subsections (2) or (3) is subject to penalties  
 118 provided in s. 400.995.  
 119 Section 2. Paragraphs (pp) and (qq) are added to subsection  
 120 (1) of section 456.072, Florida Statutes, to read:  
 121 456.072 Grounds for discipline; penalties; enforcement.—  
 122 (1) The following acts shall constitute grounds for which  
 123 the disciplinary actions specified in subsection (2) may be  
 124 taken:  
 125 (pp) Intentionally implanting or inseminating a recipient  
 126 or causing a recipient to be implanted or inseminated with the  
 127 reproductive material, as defined in s. 383.61, of a donor  
 128 without the recipient's consent.  
 129 (qq) Violating s. 383.61.  
 130 Section 3. Section 456.51, Florida Statutes, is created to  
 131 read:  
 132 456.51 Health care practitioners; consent for pelvic  
 133 examinations.—  
 134 (1) As used in this section, the term "pelvic examination"  
 135 means the direct palpation of the organs of the female internal  
 136 reproductive system.  
 137 (2) A health care practitioner may not perform a pelvic  
 138 examination on a patient without the written consent of the  
 139 patient or the patient's legal representative executed specific  
 140 to, and expressly identifying, the pelvic examination, unless:  
 141 (a) A court orders performance of the pelvic examination  
 142 for the collection of evidence; or  
 143 (b) The pelvic examination is immediately necessary to  
 144 avert a serious risk of imminent, substantial, and irreversible  
 145 physical impairment of a major bodily function of the patient.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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146 Section 4. Paragraphs (ww) and (xx) are added to subsection  
 147 (1) of section 458.331, Florida Statutes, to read:  
 148 458.331 Grounds for disciplinary action; action by the  
 149 board and department.—  
 150 (1) The following acts constitute grounds for denial of a  
 151 license or disciplinary action, as specified in s. 456.072(2):  
 152 (ww) Intentionally implanting or inseminating a recipient  
 153 or causing a recipient to be implanted or inseminated with the  
 154 reproductive material, as defined in s. 383.61, of a donor  
 155 without the recipient's consent.  
 156 (xx) Violating s. 383.61.  
 157 Section 5. Paragraphs (yy) and (zz) are added to subsection  
 158 (1) of section 459.015, Florida Statutes, to read:  
 159 459.015 Grounds for disciplinary action; action by the  
 160 board and department.—  
 161 (1) The following acts constitute grounds for denial of a  
 162 license or disciplinary action, as specified in s. 456.072(2):  
 163 (yy) Intentionally implanting or inseminating a recipient  
 164 or causing a recipient to be implanted or inseminated with the  
 165 reproductive material, as defined in s. 383.61, of a donor  
 166 without the recipient's consent.  
 167 (zz) Violating s. 383.61.  
 168 Section 6. Section 784.086, Florida Statutes, is created to  
 169 read:  
 170 784.086 Reproductive battery.—  
 171 (1) As used in this section, the term:  
 172 (a) "Donor" has the same meaning as in s. 383.61.  
 173 (b) "Health care practitioner" has the same meaning as in  
 174 s. 456.001.

Page 6 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-03834-20

2020698c1

175 (c) "Recipient" has the same meaning as in s. 383.61.  
176 (d) "Reproductive material" has the same meaning as in s.  
177 383.61.  
178 (2) A health care practitioner may not intentionally  
179 penetrate the vagina of a recipient with the reproductive  
180 material of a donor or any object containing the reproductive  
181 material of a donor, knowing the recipient has not consented to  
182 the use of the reproductive material from that donor.  
183 (a) A health care practitioner who violates this section  
184 commits reproductive battery, a felony of the third degree,  
185 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
186 (b) A health care practitioner who violates this section  
187 and is the donor of the reproductive material commits a felony  
188 of the second degree, punishable as provided in s. 775.082, s.  
189 775.083, or s. 775.084.  
190 (3) Notwithstanding any other law, the period of limitation  
191 for a violation under this section does not begin to run until  
192 the date on which the violation is discovered and reported to  
193 law enforcement or any other governmental agency.  
194 (4) It is not a defense to the crime of reproductive  
195 battery that the recipient consented to an anonymous donor.  
196 Section 7. This act shall take effect July 1, 2020.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Children, Families, and Elder Affairs, *Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Health and Human  
Services  
Health Policy  
Rules

### JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR LAUREN BOOK  
32nd District

February 19, 2020

Chair Lizbeth Benacquisto  
Committee on Rules  
402 Senate Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Benacquisto:

I respectfully request that **SB 698—Assisted Reproduction Facilities** be placed on the agenda for the next Committee on Rules meeting, if received.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Lauren Book".

Senator Lauren Book  
Senate District 32

Cc: John B. Phelps, Staff Director  
Cynthia Futch, Administrative Assistant

### REPLY TO:

- 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
- 202 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/26

Meeting Date

698

Bill Number (if applicable)

Topic Artificial Rep Facilities

Amendment Barcode (if applicable)

Name Ken Kniepman (keh-nee-p-man)

Job Title Associate

Address 201 W Park

Phone

Street

Tallahassee

Email

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against (The Chair will read this information into the record.)

Representing Florida Conference Catholic Bishops

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-26-20  
Meeting Date

698  
Bill Number (if applicable)

Topic Reproductive ~~Medicine~~ Health

Amendment Barcode (if applicable)

Name Andrew Shirvell

Job Title Executive Director

Address PO Box 12152  
Street

Phone (850) 404-3414

Tallahassee FL 32317  
City State Zip

Email andrew@floridavoicefortheunborn.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Voice For the Unborn

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

26 Feb 2020  
Meeting Date

698  
Bill Number (if applicable)

Topic Reproductive Health

Amendment Barcode (if applicable)

Name Melina Rayna Svanhild Farley-Barratt

Job Title Legislative Director

Address 8689 SE 69 Ter

Phone 352-226-7477

Trenton FL 32693  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FL NOW

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/26/08  
Meeting Date

1098  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 605 Middlebrooks Cir.

Phone \_\_\_\_\_

Street  
City Tallahassee

State FL

Zip 32312

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Right on Crime.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

26-Feb-2020

Meeting Date

698

Bill Number (if applicable)

Topic Reproductive Health

Amendment Barcode (if applicable)

Name Catherine Tang

Job Title \_\_\_\_\_

Address 3691 Lake Charles Dr.

Phone 850-572-4054

Street

Tallahassee

FL

32309

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Donor conceived people

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/25/2020

Meeting Date

698

Bill Number (if applicable)

Topic Reproductive Health

Amendment Barcode (if applicable)

Name Matt Doran

Job Title Donor Children.com Founder, Mechanical Engineer

Address 703 Shady Ln

Phone 954-830-3582

Street

Melbourne

FL

32935

Email DonorChildren@gmail.com

City

State

Zip

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against (The Chair will read this information into the record.)

Representing Donor Conceived People

Appearing at request of Chair: [X] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-26-20

Meeting Date

698

Bill Number (if applicable)

Topic Reproductive Med

LESA

Amendment Barcode (if applicable)

Name Kim McGlynn

Job Title Gov'tal Affairs

Address 101 N Monroe St Ste 1090

Phone 850 681-0411

Street

Tallah

FL

32301

City

State

Zip

Email kim.mcglynn@bife.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing USF Health

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-26-20

Meeting Date

698

Bill Number (if applicable)

LF 5A

Amendment Barcode (if applicable)

Topic Reproductive Med/Pelvic Exam

Name Charles Lockwood

Job Title Dean, USF Health

Address USF Health Campus

Street

Tampa FL

City

State

Zip

Phone 850 509-7920

Email clockwood@usf.edu

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing USF Health

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7002

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: OGSR/State Child Abuse Death Review Committee

DATE: February 24, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Delia</u>	<u>Hendon</u>		<b>CF Submitted as Committee Bill</b>
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Delia</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

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## I. Summary:

SB 7002 amends s. 383.412, F.S., to save from repeal the current public records and public meetings exemptions for certain identifying information held by the State Child Abuse Death Review Committee or a local child abuse death review committee. Section 383.412, F.S., provides that any information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by and which information is held by the State Child Abuse Death Review Committee or a local committee is confidential and exempt from public disclosure. Portions of meetings of the State Child Abuse Death Review Committee or a local committee at which this confidential and exempt information is discussed are exempt from public meeting requirements. The bill removes the scheduled repeal date, resulting in the continuation of the public records and public meetings exemptions.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 1, 2020.

## II. Present Situation:

### Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

<sup>2</sup> *Id.*

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, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

### **Executive Agency Records – The Public Records Act**

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>5</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>10</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup>

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<sup>3</sup> 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)

<sup>4</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>5</sup> Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.07(1)(a), F.S.

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

<sup>11</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did

General exemptions from the public records requirements are contained in the Public Records Act.<sup>12</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>13</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.<sup>14</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

### Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.<sup>16</sup> 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.<sup>17</sup> This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.<sup>18</sup>

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,”<sup>19</sup> or the “Sunshine Law,”<sup>20</sup> 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.<sup>21</sup> The board or commission must provide the public reasonable notice of such meetings.<sup>22</sup> 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.<sup>23</sup> Minutes of a public meeting must be promptly recorded and open to public

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not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>12</sup> See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>13</sup> See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>14</sup> See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

<sup>15</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>16</sup> FLA. CONST., art. I, s. 24(b).

<sup>17</sup> *Id.*

<sup>18</sup> FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

<sup>19</sup> *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

<sup>20</sup> *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

<sup>21</sup> Section 286.011(1)-(2), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 286.011(6), F.S.

inspection.<sup>24</sup> Failure to abide by open meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.<sup>25</sup> A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>29</sup>

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records exemptions,<sup>30</sup> with specified exceptions.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>34</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>35</sup> public records or open meetings exemptions, with specified exceptions.<sup>36</sup> 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.<sup>37</sup>

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<sup>24</sup> Section 286.011(2), F.S.

<sup>25</sup> Section 286.011(1), F.S.

<sup>26</sup> Section 286.011(3), F.S.

<sup>27</sup> FLA. CONST., art. I, s. 24(c).

<sup>28</sup> *Id.*

<sup>29</sup> *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.

<sup>30</sup> 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.).

<sup>31</sup> 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.

<sup>32</sup> Section 119.15(3), F.S.

<sup>33</sup> Section 119.15(6)(b), F.S.

<sup>34</sup> Section 119.15, F.S.

<sup>35</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>36</sup> 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.

<sup>37</sup> 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.<sup>38</sup> 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;<sup>39</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>40</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>41</sup>

The Act also requires specified questions to be considered during the review process.<sup>42</sup> In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>43</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>44</sup>

### **Child Abuse Death Review**

Current law establishes the State Child Abuse Death Review Committee (State Committee) and local child abuse review committees (Local Committees) (collectively, the Committees) within the Department of Health.<sup>45</sup> The Committees must review the facts and circumstances of all

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<sup>38</sup> Section 119.15(6)(b), F.S.

<sup>39</sup> Section 119.15(6)(b)1., F.S.

<sup>40</sup> Section 119.15(6)(b)2., F.S.

<sup>41</sup> Section 119.15(6)(b)3., F.S.

<sup>42</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>43</sup> See *generally* s. 119.15, F.S.

<sup>44</sup> Section 119.15(7), F.S.

<sup>45</sup> Section 383.402, F.S.

deaths of children from birth to age 18 which occur in this state and are reported to the central abuse hotline of the Department of Children and Families.<sup>46</sup>

The State Committee must prepare a comprehensive annual statistical report regarding deaths from child abuse.<sup>47</sup> The report, at a minimum, must include:

- Descriptive statistics, including demographic information regarding victims and caregivers, and the causes and nature of deaths;
- A detailed statistical analysis of the incidence and causes of deaths;
- Specific issues identified within current policy, procedure, rule, or statute and recommendations to address those issues from both the state and local committees; and
- Other recommendations to prevent deaths from child abuse based on an analysis of the data presented in the report.<sup>48</sup>

The law provides the Committees with broad access to and use of information related to a child whose death is under review and that is necessary for the Committee to carry out its duties, including:

- Medical, dental or mental health treatment records;
- Records in in possession of a state agency or political subdivision; and
- Records of law enforcement which are not part of an active investigation.<sup>49</sup>

### **Exemptions Under Review**

Current law provides both a public records and a public meetings exemption for the State Committee and a Local Committee.<sup>50</sup>

Information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by the State Committee or a Local Committee is confidential and exempt from public records requirements.<sup>51</sup> In addition, confidential or exempt information obtained by the Committee or a Local Committee retains its confidential or exempt status.<sup>52</sup> The State and Local Committees may share with each other any relevant confidential or exempt information regarding case reviews.<sup>53</sup> Any person who knowingly or willfully violates the public records exemption commits a misdemeanor of the first degree.<sup>54,55</sup>

Portions of meetings of the State Committee or a Local Committee at which confidential and exempt information is discussed are exempt from open meetings requirements.<sup>56</sup> The closed

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<sup>46</sup> Section 383.402(1), F.S.

<sup>47</sup> Section 383.402(4), F.S.

<sup>48</sup> Section 383.402(5), F.S.

<sup>49</sup> Section 383.402(5)(a) and (b), F.S.

<sup>50</sup> Section 383.412, F.S.

<sup>51</sup> Section 383.412(2)(a), F.S.

<sup>52</sup> Section 383.412(2)(b), F.S.

<sup>53</sup> Section 383.412(4), F.S.

<sup>54</sup> Section 383.412(5), F.S.

<sup>55</sup> A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year and a fine not to exceed \$1,000. *See* 775.082(4)(a) and 775.083(1)(d), F.S.

<sup>56</sup> Section 383.412(3), F.S.

portion of a meeting must continue to be recorded and no portion of the closed meeting is permitted to be off the record.<sup>57</sup> The recording of a closed meeting is exempt from public records requirements.<sup>58</sup>

Pursuant to the Act, these exemptions are repealed October 2, 2020, unless saved from repeal by the Legislature.<sup>59</sup>

The public records and public meetings exemptions were initially enacted by the Legislature in 1999 and amended and reenacted, thereafter in 2005, 2010, and 2015.<sup>60, 61</sup> The 2015 amendment narrowed the public records exemption for identifying information related to cases of verified abuse and neglect to information that identifies the deceased child's siblings.<sup>62</sup> It also expanded the public records exemption to include information held by the State Committee or a Local Committee which reveals the identity of a deceased child whose death is not the result of verified abuse or neglect as well as the identity of the surviving siblings, family members, or others living in the home.<sup>63</sup> This amendment also authorized the release of confidential information to a governmental agency in furtherance of its duties or a person or entity for research or statistical purposes.<sup>64</sup>

The Legislature's stated purpose for the public records exemption was "to increase the potential for reduced morbidity or mortality of children and reduce the potential for poor outcomes for children, thereby improving the overall quality of life for children."<sup>65</sup> Additionally, the Legislature found it was a public necessity for portions of the Committees' meetings, wherein confidential and exempt information is discussed, to be made exempt from the public meetings requirements.<sup>66</sup> Without such an exemption, the Legislature found the open communication and coordination among the parties would be hampered, and the release of confidential and exempt information in a public meeting would defeat the purpose of the public records exemption.<sup>67</sup> Thus, the Legislature found the harm resulting from the release of such information substantially outweighed any public benefit.<sup>68</sup>

### **Senate Review of s. 383.412, F.S.**

In the course of conducting the Open Government Sunset Review of s. 383.412, F.S., the Senate Children, Families, and Elder Affairs Committee staff met with representatives from the

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Section 383.412(6), F.S.

<sup>60</sup> See Chs. 99-210, 2005-190, 2010-40, and 2015-77, Laws of Fla.

<sup>61</sup> The initial act sunset in 2004 when legislation to reenact the exemption failed to pass both chambers of the Legislature. See Florida Senate, *Website Archive*, Senate 0462: Relating to Child Fatalities/Pub. Rec./OGSR [http://archive.flsenate.gov/session/index.cfm?BI\\_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2004&billnum=462](http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2004&billnum=462) (last visited Oct. 31, 2019).

<sup>62</sup> Ch. 2015-77, Laws of Fla.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Ch. 99-210, s. 2, Laws of Fla.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

Department of Health (DOH) and the Department of Children and Families (DCF) and conducted surveys of each of the 23 Local Committees.

DOH and DCF staff stated that the exemptions have been effective and recommended making no changes to the public records and public meeting exemptions. Similarly, surveys of the 23 Local Committees showed near unanimous support for keeping the exemptions in place and unchanged.<sup>69</sup>

Based upon a review of the public records and public meetings exemptions found in s. 383.412, F.S., under the Open Government Sunset Review Act, as well as discussions with and recommendations of DOH and DCF and survey results from the 23 local committees, the professional staff of the Senate Children, Families, and Elder Affairs Committee recommends the Legislature retain both the public records and public meetings exemptions established in s. 383.412, F.S.

### **III. Effect of Proposed Changes:**

The bill is based on an Open Government Sunset Review of a public records and public meetings exemption for personal identifying information held by the DOH and by the Committees, and for portions of meetings of the Committees at which such confidential and exempt information is discussed.

The bill amends s. 383.412, F.S., to continue the current public records and public meetings exemptions. Records containing the specified personal identifying information will continue to be exempt from public disclosure. Additionally, those portions of meetings of the State Committee or a Local Committee at which such confidential and exempt information is discussed will continue to be exempt from the public meetings requirement.<sup>70</sup>

By removing the scheduled repeal of the exemptions, the exemptions are no longer subject to review under the Open Government Sunset Review Act.

The bill takes effect October 1, 2020.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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<sup>69</sup> Summary of 2019 Local Child Abuse Death Review Committee Surveys. On file with the Senate Committee on Children, Families, and Elder Affairs.

<sup>70</sup> Section 383.412(3)(a), F.S.

**B. Public Records/Open Meetings Issues:*****Vote Requirement***

Article I, s. 24(c) of the State Constitution requires 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. The bill continues a current public records and public meetings exemption beyond its current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

***Public Necessity Statement***

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements or the open meeting requirements to state with specificity the public necessity justifying the exemption. The bill continues a current public records and public meetings exemption without an expansion. Thus, a statement of public necessity is not required.

***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements and the open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the exemptions is to protect personal identifying information related to the surviving family members in child abuse-related death cases. The exemptions do not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

**C. Government Sector Impact:**

Governmental agencies will continue to incur costs related to the redaction of records in responding to public records requests. Additionally, governmental agencies will continue to incur costs associated with recording the closed portion of meetings held by the Committees wherein confidential and exempt information is discussed.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 383.412 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By the Committee on Children, Families, and Elder Affairs

586-01483-20

20207002\_\_

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 383.412, F.S., relating to an exemption from public records and meeting requirements for certain identifying information held or discussed by the State Child Abuse Death Review Committee or a local committee; removing the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 383.412, Florida Statutes, is amended to read:

383.412 Public records and public meetings exemptions.—

(1) For purposes of this section, the term "local committee" means a local child abuse death review committee or a panel or committee assembled by the State Child Abuse Death Review Committee or a local child abuse death review committee pursuant to s. 383.402.

(2) (a) Any information held by the State Child Abuse Death Review Committee or a local committee which reveals the identity of the surviving siblings of a deceased child whose death occurred as the result of a verified report of abuse or neglect is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Any information held by the State Child Abuse Death Review Committee or a local committee which reveals the identity of a deceased child whose death has been reported to the central abuse hotline but determined not to be the result of abuse or

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

586-01483-20

20207002\_\_

neglect, or the identity of the surviving siblings, family members, or others living in the home of such deceased child, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) Information made confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution which is obtained by the State Child Abuse Death Review Committee or a local committee shall retain its confidential or exempt status.

(3) (a) Portions of meetings of the State Child Abuse Death Review Committee or a local committee at which information made confidential and exempt pursuant to subsection (2) is discussed are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. The closed portion of a meeting must be recorded, and no portion of the closed meeting may be off the record. The recording shall be maintained by the State Child Abuse Death Review Committee or a local committee.

(b) The recording of a closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) The State Child Abuse Death Review Committee and local committees may share information made confidential and exempt by this section:

(a) With each other;

(b) With a governmental agency in furtherance of its duties; or

(c) With any person or entity authorized by the Department of Health to use such relevant information for bona fide research or statistical purposes. A person or entity who is authorized to obtain such relevant information for research or

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

586-01483-20

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59 statistical purposes must enter into a privacy and security  
60 agreement with the Department of Health and comply with all laws  
61 and rules governing the use of such records and information for  
62 research or statistical purposes. Anything identifying the  
63 subjects of such relevant information must be treated as  
64 confidential by the person or entity and may not be released in  
65 any form.

66 (5) Any person who knowingly or willfully makes public or  
67 discloses to any unauthorized person any information made  
68 confidential and exempt under this section commits a misdemeanor  
69 of the first degree, punishable as provided in s. 775.082 or s.  
70 775.083.

71 ~~(6) This section is subject to the Open Government Sunset~~  
72 ~~Review Act in accordance with s. 119.15, and shall stand~~  
73 ~~repealed on October 2, 2020, unless reviewed and saved from~~  
74 ~~repeal through reenactment by the Legislature.~~

75 Section 2. This act shall take effect October 1, 2020.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Children, Families, and Elder Affairs, *Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Health and Human  
Services  
Health Policy  
Rules

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission

**SENATOR LAUREN BOOK**  
32nd District

January 31, 2020

Chair Lizbeth Benacquisto  
Committee on Rules  
402 Senate Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Benacquisto:

I respectfully request that **SB 7002—OGSR/State Child Abuse Death Review Committee**, be placed on the agenda for the next Committee on Rules.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Lauren Book".

Senator Lauren Book  
Senate District 32

Cc: John B. Phelps, Staff Director  
Cynthia Futch, Committee Administrative Assistant

**REPLY TO:**

- 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
- 202 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1148

INTRODUCER: Infrastructure and Security Committee and Senator Brandes

SUBJECT: Electric Bicycles

DATE: February 24, 2020

REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Miller</u>	<u>IS</u>	<b>Fav/CS</b>
2.	<u>Toman</u>	<u>Ryon</u>	<u>CA</u>	<b>Favorable</b>
3.	<u>Price</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1148 addresses the definition and operation of electric bicycles (e-bikes) within a three-tiered classification system, revising a number of related definitions. The bill creates regulations governing the operation of e-bikes, affording an e-bike or e-bike operator with all of the rights and privileges, and subjecting them to all of the duties, of a bicycle or bicycle operator. E-bikes are authorized to operate where bicycles are allowed, including, but not limited to, streets, highways, roadways, shoulders, bicycle lanes, and bicycle or multiuse paths. However, the bill provides that the new e-bike regulations may not be construed to prevent a local government from regulating the operation of e-bikes on streets, highways, sidewalks, and sidewalk areas under the local government's jurisdiction; or to prevent a municipality, county, or agency of the state having jurisdiction over a bicycle lane, bicycle path, multiuse path, or trail network from restricting or prohibiting the operation of an e-bike on such lanes, paths, or trail networks.

The bill provides that an e-bike or an e-bike operator is not subject to the provisions of law relating to financial responsibility, driver or motor vehicle licenses, vehicle registration, title certificates, off-highway motorcycles, or off-highway vehicles. Additionally, the bill sets out labeling requirements for manufacturers and distributors of electric bicycles and prohibits tampering with or modifying an electric bicycle unless the label is replaced after modification.

The bill will likely have a negative but insignificant fiscal impact to the State Transportation Trust Fund and the Highway Safety Operating Trust Fund. The fiscal impact to local governments is indeterminate. See the “Fiscal Impact Statement” for additional information.

The bill takes effect July 1, 2020.

## II. Present Situation:

In 2002, Congress amended the Consumer Product Safety Commission (CPSC) definition of e-bikes.<sup>1</sup> The law defines a low-speed e-bike as “A two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.” The federal law permits e-bikes to be powered by the motor alone (a “throttle-assist” e-bike), or by a combination of motor and human power (a “pedal-assist” e-bike).<sup>2</sup>

Devices that meet the federal definition of an e-bike are regulated by the CPSC and must meet bicycle safety standards. However, federal law only applies to e-bikes’ product standards and safety, and only specifies the maximum speed that an e-bike can travel under motor power alone. It does not provide a maximum speed when the bicycle is being propelled by a combination of human and motor power. The law does distinguish e-bikes that can travel 20 mph or less under motor power *alone* from motorcycles, mopeds, and motor vehicles.<sup>3</sup> The CPSC has clarified that the federal law does not prohibit e-bikes from traveling faster than 20 mph when using a combination of human and motor power.<sup>4</sup>

While the federal government regulates the manufacturing and first sale of an e-bike, its operation on streets and bikeways remains within each state’s control. Therefore, many states have their own laws that categorize e-bikes with mopeds and other motorized vehicles, require licensure and registration, or do not enable them to be used on facilities such as bike lanes or multi-purpose trails.<sup>5</sup>

For ease of organization of the provisions in SB 1148, the present situation is discussed below in conjunction with the Effect of Proposed Changes.

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<sup>1</sup> House Bill 727, available at <https://www.congress.gov/bill/107th-congress/house-bill/727/text> (last visited February 6, 2020).

<sup>2</sup> National Conference of State Legislatures, *State Electric Bicycle Laws: A Legislative Primer* (March 28, 2019), available at <https://www.ncsl.org/research/transportation/state-electric-bicycle-laws-a-legislative-primer.aspx> (last visited February 6, 2020).

<sup>3</sup> *Id.* Emphasis added.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

## Bicycle Regulation

### *Present Situation*

#### State Bicycle Regulation:

Section 316.003(4), F.S., defines a “bicycle” as “every vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.”<sup>6</sup> The term does not include:

- Such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position, or
- A scooter or similar device.

That section prohibits a person under the age of 16 from operating or riding upon a motorized bicycle.<sup>7</sup>

Under current law, every person propelling a vehicle *by human power* has all of the rights and duties applicable to any other vehicle driver and is generally required to obey the same rules of the road as other vehicle operators, including traffic signs, signals, and lane markings.<sup>8</sup> Section 316.2065, F.S., governs the operation of bicycles in Florida and provides a number of regulations, including:

- A bicycle rider or passenger who is under 16 years of age must wear a bicycle helmet.<sup>9</sup>
- A person may not knowingly rent or lease any bicycle to be ridden by a child who is under the age of 16 years unless the child possesses a bicycle helmet or the lessor provides a bicycle helmet for the child to wear.<sup>10</sup>
- Every bicycle in use between sunset and sunrise must be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a lamp and reflector on the rear each exhibiting a red light visible from a distance of 600 feet to the rear.<sup>11</sup>
- A person operating a bicycle on a sidewalk, or across a roadway on a crosswalk, must yield the right-of-way to any pedestrian and must give an audible signal before overtaking and passing the pedestrian.<sup>12</sup>

A person operating a bicycle on a roadway must ride in the bicycle lane, but if there is no bicycle lane, the bicycle operator must ride as close to the right-hand curb or edge of the roadway as practicable, except when:

- Overtaking and passing another bicycle or vehicle proceeding in the same direction.

<sup>6</sup> Section 316.003(4), F.S. Emphasis added.

<sup>7</sup> *Id.*

<sup>8</sup> Section 316.2065, F.S.

<sup>9</sup> Section 316.2065(3)(d), F.S.

<sup>10</sup> Section 316.2065(15)(a), F.S.

<sup>11</sup> Section 316.2065(7), F.S.

<sup>12</sup> Section 316.2065(10), F.S.

- Preparing for a left turn at an intersection or into a private road or driveway.
- Reasonably necessary to avoid any condition or potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane.<sup>13</sup>

Bicycle operators traveling on a one-way highway with two or more marked traffic lanes may ride as near to the left-hand curb or edge of the roadway as practicable<sup>14</sup> and bicycle operators may not ride more than two abreast on a roadway.<sup>15</sup>

With respect to vehicle drivers relative to a bicycle or other nonmotorized vehicle on the roadway, a driver overtaking either must pass at a safe distance of not less than three feet between the vehicle and the bicycle or nonmotorized vehicle.<sup>16</sup>

Bicycles are currently excluded from provisions of law relating to child restraint requirements,<sup>17</sup> safety belt usage,<sup>18</sup> vehicle registration,<sup>19</sup> driver licensing,<sup>20</sup> minimum insurance requirements,<sup>21</sup> and waste tire and lead-acid battery requirements.<sup>22</sup>

#### Motorized Bicycle Registration:

For purposes of vehicle registration, s. 320.01, F.S., currently provides that a “motor vehicle” does not include bicycles. However, among other fees, s. 320.08, F.S., imposes a \$5 flat fee for registration (or renewal of registration) of mopeds and motorized bicycles. In addition, a \$2.50 motorcycle safety education fee is imposed on mopeds, which is deposited into the Highway Safety Operating Trust Fund (HSOTF).<sup>23</sup> The Department of Highway Safety and Motor Vehicles advises that moped and motorized bicycle registration data is combined and provides the following information on moped *and* motorized bicycle registration:<sup>24</sup>

<sup>13</sup> Section 316.2065(5)(a), F.S. For purposes of subsection (5), a substandard width lane is any lane that is too narrow for a bicycle and another vehicle to travel safely side-by-side within the lane.

<sup>14</sup> Section 316.2065(5)(b), F.S.

<sup>15</sup> Section 316.2065(6), F.S.

<sup>16</sup> Section 316.083, F.S.

<sup>17</sup> Section 316.613(2), F.S.

<sup>18</sup> Section 316.614(3)(a), F.S.

<sup>19</sup> Section 320.01(1), F.S.

<sup>20</sup> Section 322.01(27) and (44), F.S.

<sup>21</sup> Section 324.021(1), F.S.

<sup>22</sup> Section 403.717(1), F.S.

<sup>23</sup> Section 320.08(1)(c), F.S. These funds may be used to fund a motorcycle driver improvement program, the Florida Motorcycle Safety Education Program, or the general operations of the Department of Highway Safety and Motor Vehicles.

<sup>24</sup> See email to House Committee Staff, January 9, 2020 (on file in the Senate Infrastructure and Security Committee).

Section 320.20, F.S., after other distributions, directs the remainder of revenue derived from registration of motor vehicles for deposit in the State Transportation Trust Fund.

Moped and Motorized Bicycle Registration Transactions		
FY 2016-17	FY 2017-18	FY 2018-19
2,389	2,159	1,951
Moped and Motorized Bicycle Revenue Distribution		
State Transportation Trust Fund (\$5)		
\$11,945.00	\$10,795.00	\$9,755.00
Highway Safety Operating Trust Fund (\$2.50)		
\$5,972.50	\$5,397.50	\$4,877.50

Local Regulation of Bicycles and Other Motorized Transportation Modes:

Local authorities, in the exercise of their police power, are authorized to regulate the operation of bicycles.<sup>25</sup> Additionally, local authorities may prohibit or regulate the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic.<sup>26</sup> As the definition of “bicycles” currently includes motorized bicycles, local authorities are authorized to impose regulations under both grants of power.

Current law prohibits a person from driving any vehicle *other than by human power* upon a bicycle path, sidewalk, or sidewalk area, except upon a permanent or duly authorized temporary driveway.<sup>27</sup> However, exceptions to the prohibition are made with respect to local regulation, and current law provides that:

- A county or municipality may enact an ordinance to regulate the operation of vehicles, golf carts, mopeds,<sup>28</sup> motorized scooters,<sup>29</sup> and electric personal assistive mobility devices<sup>30</sup> on sidewalks or sidewalk areas when such use is permissible under federal law, if the vehicles or devices are restricted to a maximum speed of 15 miles per hour in such areas.<sup>31</sup>

<sup>25</sup> Section 316.008(1)(h), F.S.

<sup>26</sup> Section 316.008(1)(n), F.S.

<sup>27</sup> Section 316.1995, F.S.

<sup>28</sup> The term “moped” means “any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels, with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters.” Section 316.003(41), F.S.

<sup>29</sup> The term “motorized scooter” means “any vehicle or micromobility device that is powered by a motor with or without a seat or saddle for the use of the rider, which is designed to travel on not more than three wheels, and which is not capable of propelling the vehicle at a speed greater than 20 miles per hour on level ground.” Section 316.003(45), F.S.

<sup>30</sup> The term “electric personal assistive mobility device” means “any self-balancing, two-nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of 750 watts (1 horsepower), the maximum speed of which, on a paved level surface when powered solely by such a propulsion system while being ridden by an operator who weighs 170 pounds, is less than 20 miles per hour.” These devices, however, are not vehicles as defined in s. 316.003, F.S. Section 316.003(22), F.S.

<sup>31</sup> Section 316.008(7)(a), F.S.

- A personal delivery device<sup>32</sup> and a mobile carrier<sup>33</sup> may be operated on sidewalks and crosswalks within a county or municipality when such use is permissible under federal law, except that a county or municipality may adopt regulations for the safe operation of personal delivery devices and mobile carriers. A personal delivery device may not be operated on the Florida Shared-Use Nonmotorized Trail Network or components of the Florida Greenways and Trails System.<sup>34</sup> As its title indicates, the network consists “of a statewide network of nonmotorized trails which *allows nonmotorized vehicles and pedestrians* to access a variety of origins and destinations *with limited exposure to motorized vehicles.*”<sup>35</sup>
- A local governmental entity may regulate golf cart operation on sidewalks adjacent to specific segments of municipal streets, county roads, or state highways within the jurisdictional territory of the local governmental entity if:
  - The local entity determines, after considering the condition and current use of the sidewalks, the character of the surrounding community, and the locations of authorized golf cart crossings, that golf carts, bicycles, and pedestrians may safely share the sidewalk;
  - The local entity consults with the Department of Transportation before adopting the ordinance;
  - The ordinance restricts golf carts to a maximum speed of 15 miles per hour and permits such use on sidewalks adjacent to state highways only if the sidewalks are at least eight feet wide;
  - The ordinance requires golf carts to meet certain equipment requirements;<sup>36</sup> and
  - The local entity posts appropriate signs or otherwise informs residents that the ordinance exists and applies to such sidewalks.<sup>37</sup>
- A local government may regulate the operation of micromobility devices and motorized scooters on streets, highways, sidewalk, and sidewalk areas under the local government’s jurisdiction.<sup>38</sup>

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<sup>32</sup> The term “personal delivery device” means “an electrically powered device that (a) is operated on sidewalks and crosswalks and intended primarily for transporting property, (b) weighs less than 80 pounds, excluding cargo; (c) has a maximum speed of 10 miles per hour; and (d) is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.” Section 316.003(55), F.S.

<sup>33</sup> The term “mobile carrier” means “an electrically powered device that (a) is operated on sidewalks and crosswalks and intended primarily for transporting property, (b) weighs less than 80 pounds, excluding cargo; (c) has a maximum speed of 12.5 miles per hour; and (d) is equipped with a technology to transport personal property with the active monitoring of a property owner and primarily designed to remain with 25 feet of the property owner.” Section 316.003(40), F.S. Under current law, a personal delivery device is not a vehicle unless expressly defined by law as a vehicle, and a mobile carrier is not a personal delivery device. Section 316.003(55), F.S.

<sup>34</sup> Section 316.008(7)(b), F.S. Emphasis added. Section 339.81, F.S., creates the Florida Shared-Use Nonmotorized Trail Network as a component of the Florida Greenways and Trails System established in ch. 260, F.S. “The statewide network consists of multiuse trails or shared-use paths physically separated from motor vehicle traffic and constructed with asphalt, concrete, or another hard surface which, by virtue of design, location, extent of connectivity or potential connectivity, and allowable uses, provides *nonmotorized* transportation opportunities for bicyclists and pedestrians statewide....” Section 339.81(2), F.S.

<sup>35</sup> Section 339.81(1), F.S. Emphasis added. A bicycle rider or pedestrian on the trail network might, for example, encounter limited exposure to motorized vehicles on an on-road facility no longer than one-half mile connecting two or more nonmotorized trails. *See* s. 339.81(3)(a), F.S.

<sup>36</sup> Section 316.212(6), F.S., requires a golf cart to be equipped with efficient brakes, reliable steering apparatus, safe tires, a rear-view mirror, and red reflectorized warning devices in both the front and rear.

<sup>37</sup> Section 316.212(8)(b), F.S.

<sup>38</sup> Section 316.2128, F.S.

### III. Effect of Proposed Changes

#### Definitions (Sections 1, 2, 4, and 7-15):

**Section 2** of the bill revises s. 316.003, F.S., relating to definitions for the purposes of state uniform traffic control requirements. Specifically, the bill removes the definition of “motorized bicycle” from within the definition of “bicycle.” The bill creates a separate definition for “electric bicycle,” and defines three classes, as follows:

- “Electric bicycle” means “a bicycle or tricycle equipped with fully operable pedals, a seat or saddle for the use of the rider, and an electric motor of less than 750 watts which meets the requirements of one of the following three classifications:
  - “Class 1 electric bicycle” means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the electric bicycle reaches the speed of 20 miles per hour.
  - “Class 2 electric bicycle” means an electric bicycle equipped with a motor that may be used exclusively to propel the electric bicycle and that ceases to provide assistance when the electric bicycle reaches the speed of 20 miles per hour.
  - “Class 3 electric bicycle” means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the electric bicycle reaches the speed of 28 miles per hour.

The bill deletes the provision in the current definition of “bicycle” providing that the term does not include “a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position,” leaving in place exclusion from the definition of a scooter or similar device. This revision means that vehicles with the specified seat height are bicycles and would be subject to all bicycle regulations.

While provided information<sup>39</sup> indicates that this revision is an attempt to address confusion over recumbent bicycles and tricycles,<sup>40</sup> a reading of the plain words of the revision could allow small children to legally operate the described bicycles on highways and streets.<sup>41</sup> However, riders of the described bicycles who are under 16 years of age would be required to wear bicycle helmets.<sup>42</sup>

The bill deletes the provision in the current definition of “bicycle” prohibiting a person under the age of 16 from operating or riding on a motorized bicycle. Presumably, this revision is intended to authorize any person, regardless of age, to operate or ride on an e-bike as defined in the bill.

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<sup>39</sup> Telephone conversation with Becky Afonso, Executive Director, Florida Bicycle Association, January 31, 2020. *See also* FDOT and DHSMV email to committee staff, January 31, 2020 (on file in the Senate Infrastructure and Security Committee).

<sup>40</sup> Merriam-Webster defines “recumbent” with respect to a bicycle as “a bicycle with a wide seat that has a back support and is positioned so that the rider’s legs are extended horizontally forward to the pedals and the body is reclined. Merriam-Webster, available at <https://www.merriam-webster.com/dictionary/recumbent> (last visited Feb. 6, 2020).

<sup>41</sup> *See* s. 316.2065(5)(a), F.S.

<sup>42</sup> Section 316.2065(3)(d), F.S.

This section of the bill also excludes e-bikes from the current definitions of moped,<sup>43</sup> motor vehicle,<sup>44</sup> motorcycle,<sup>45</sup> and motorized scooter.<sup>46</sup> Definition of the terms “bicycle,” “moped,” “motorcycle,” and “motorized scooter” continue to include identification as “vehicles.”

**Section 4** of the bill amends s. 316.027, F.S., relating to vulnerable road users and leaving the scene of a crash, to include a person operating an e-bike within that section’s definition of “vulnerable road user.” This revision has no effect, as under current law, a motorized bicycle rider is already a vulnerable road user.

**Sections 1 and 9 through 15** make conforming revisions, likewise excluding e-bikes from the current definitions of:

- “OHM” or “off-highway motorcycle” in s. 261.03(4), F.S., for purposes of off-highway vehicle safety and recreation provisions.
- “Motor vehicle” in s. 316.613(2), F.S., relating to child restraint requirements; in s. 316.614(3)(a), F.S., relating to safety belt usage; in s. 320.01(1), F.S., relating to motor vehicle registration; in s. 322.01(27), F.S., relating to driver licensing; in s. 324.021(1), F.S., relating to minimum insurance requirements; in s. 403.717(1), F.S., relating to waste tire and lead-acid battery requirements; and in s. 681.102(14), F.S., relating to motor vehicle sales warranties.
- “Vehicle” in s. 322.01(44), F.S., relating to driver licensing.

State and Local Regulation of E-bikes (Sections 3, 5, and 8):

**Section 3** amends s. 316.008(7)(a), F.S., relating to powers of local authorities with respect to traffic control, authorizing a county or municipality to enact an ordinance regulating the operation of e-bikes on sidewalks and sidewalk areas when such use is permissible under federal law.<sup>47</sup> Under current state law, the ordinance must restrict e-bikes to a maximum speed of 15 miles per hour in such areas. While federal law *authorizes* state and local regulations permitting the use of e-bikes on sidewalks, whether to undertake such state or local regulation is within state or local government discretion.

**Section 8** creates s. 316.20655, F.S., establishing regulations governing the operation of e-bikes and providing that an e-bike or an e-bike operator shall be afforded all the rights and privileges,

<sup>43</sup> *Supra* note 28.

<sup>44</sup> Currently defined, except when used in s. 316.1001, F.S., relating to toll payment, as “a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped.” Section 316.003(43), F.S.

<sup>45</sup> Currently defined as “any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground,” including an auticycle, but the term “does not include a tractor, a moped, or any vehicle in which the operator is enclosed by a cabin unless it meets the requirements of the National Highway Traffic Safety Administration for a motorcycle.” Section 316.003(44), F.S.

<sup>46</sup> *Supra* note 29.

<sup>47</sup> 23 U.S.C. s. 217 authorizes a state to expend certain funds for construction of pedestrian walkways (sidewalks) and bicycle transportation facilities and for carrying out non-construction projects related to safe bicycle use. 23 U.S.C. s. 217(h) specifically prohibits motorized vehicles on trails and pedestrian walkways if such funds are used by the state to construct them, except for maintenance purposes; when snow conditions and state or local regulations permit, snowmobiles; motorized wheelchairs; when state or local regulations permit, electric bicycles; and such other circumstances as the U.S.D.O.T. Secretary deems appropriate. Failure to comply can result in the state’s loss of those federal funds.

and be subject to all of the duties, of a bicycle or a bicycle operator, including s. 316.2065, F.S., governing the operation of bicycles. However, the bill provides that the new section of law may not be construed to prevent a local government, through the exercise of its powers under s. 316.008, F.S., from adopting an ordinance governing the operation of e-bikes on streets, highways, sidewalks, and sidewalk areas under the local government's jurisdiction; or to prevent a municipality, county, or agency of the state having jurisdiction over a bicycle lane, bicycle path, multiuse path, or trail network from restricting or prohibiting the operation of an e-bike on such lanes, paths, or trail networks.

Under the bill, an e-bike is considered a vehicle to the same extent as a bicycle, and the bill authorizes an e-bike to operate where bicycles are allowed, including, but not limited to, streets, highways, roadways, shoulders, bicycle lanes, bicycle or multiuse paths, and trail networks, unless restricted or prohibited as authorized.

Like bicycles under current law, the bill provides that an e-bike or an operator of an e-bike is not subject to the provisions of law relating to financial responsibility, driver or motor vehicle licenses, vehicle registration, title certificates, off-highway motorcycles, or off-highway vehicles. These provisions have no effect, as bicycles are already excluded from those provisions, except that "motorized" bicycles as currently defined are subject to the described registration fees. E-bikes will not be subject to registration fees.

The bill also requires that an e-bike must function so that the electric motor is disengaged or ceases to function when the rider stops pedaling or when the brakes are applied.

Beginning January 1, 2021, the bill requires manufacturers and distributors of e-bikes to apply a label that is permanently affixed in a prominent location to each e-bike containing the classification number, top assisted speed, and motor wattage of the e-bike. The bill prohibits a person from tampering with or modifying an e-bike in order to change the motor-powered speed capability or engagement of an e-bike, unless the label indicating the classification number required is replaced after such modification. E-bikes must comply with the equipment and manufacturing requirements for bicycles adopted by the CPSC.<sup>48</sup> The latter provision is a restatement of current law, as bicycles (including e-bikes) must already comply with the requirements of applicable federal law.

**Section 5** amends s. 316.083, F.S., to include e-bikes in the provisions of law relating to a driver overtaking a bicycle or other nonmotorized vehicle. Under the bill, a driver overtaking an e-bikes must pass the e-bike at a safe distance of not less than three feet between the vehicle and the e-bike.

#### Motorized Bicycle Registration (Section 16):

**Section 16** amends s. 320.08, F.S., to repeal the imposition of the \$5 flat fee for registration or registration renewal, as well as the \$2.50 safety education fee, imposed on motorized bicycles. These fees will no longer be collected and distributed into the State Transportation Trust Fund and the Highway Safety Operating Trust Fund.

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<sup>48</sup> 16 C.F.R. Part 1512 applies to bicycles and e-bikes.

Additional Technical and Conforming Changes (Sections 6, 7, 17, and 18):

**Section 6** amends s. 316.1995, F.S., relating to driving on a sidewalk or bicycle path, to insert a cross-reference to the e-bike regulations in new s. 316.20655, F.S.

**Section 7** amends s. 316.2065(3)(d), F.S., to remove references to obsolete bicycle helmet safety standards, leaving in place reference to the federal safety standard for bicycle helmets in 16 C.F.R. part 1203.

**Section 17 and 18** amend ss. 316.306 and 655.960, F.S., to correct cross-references made necessary by the revisions to the definitions in s. 316.003, F.S.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues 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.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Owners of e-bikes will no longer have to pay a \$5 flat fee for registration or registration renewal, nor the \$2.50 safety education fee.

**C. Government Sector Impact:**

The bill will likely have a negative but insignificant fiscal impact to the State Transportation Trust Fund and Highway Safety Operating Trust Fund. In FY 2018-19, \$14,633 was collected by the Department of Highway Safety and Motor Vehicles (DHSMV) for both moped and motorized bicycle registration fees.<sup>49</sup> Because the data is collected and stored together, it is uncertain what percent of the \$14,633 is associated with motorized bicycle registration fees that would not be collected under the bill. The DHSMV advises its Division of Motorist Services will be required to modify its existing procedures, website, driver license handbook, and communications to specific stakeholders, including tax collectors, but assigned no dollar value to these expenses.<sup>50</sup>

Local governments that choose to hold public hearings for the purpose of restricting or prohibiting the operation of an e-bike on bicycle or multi-use paths may incur indeterminate but likely insignificant expenses, offset by possible penalties for violation of any restriction or limitation adopted by the local government. However, the fiscal impact to local governments is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill deletes the provision in the current definition of “bicycle” prohibiting a person under the age of 16 from operating or riding on a motorized bicycle. Presumably, this revision is intended to authorize any person, regardless of age, to operate or ride on an electric bicycle as defined in the bill. The bill may need revision to ensure that such authorization is or is not intended.

Representatives of the Florida Bicycle Association have expressed some concerns with the e-bike three-class definition. One concern is that the class 2 e-bike does not need pedal assist to engage and may be more similar to a motorized vehicle than a bicycle. Another concern is that the class 3 e-bike can reach speeds of 28 mph, which may be too fast to safely operate on sidewalks or multi-use paths.<sup>51</sup>

Likewise, some environmental groups, mountain bikers, hunters, and anglers in other states have voiced opposition to the authorization of e-bikes on public trails. Their concerns relate to damage to the trails, overcrowding of the trails, and too much access to wildlife habitats.<sup>52</sup>

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<sup>49</sup> *Supra* note 26.

<sup>50</sup> See the DHSMV’s 2020 Legislative Bill Analysis for SB 1148 (on file in the Senate Infrastructure and Security Committee).

<sup>51</sup> See email to House committee staff, November 11, 2019 (on file in the Senate Infrastructure and Security Committee).

<sup>52</sup> See Kurt Repanshek, *Dozens of Conservation Groups Oppose eBikes on Non-Motorized Trails*, National Parks Traveler (August 7, 2019), available at <https://www.nationalparkstraveler.org/2019/08/dozens-conservation-groups-oppose-ebikes-non-motorized-trails> (last visited Feb. 6, 2020).

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 261.03, 316.003, 316.027, 316.083, 316.1995, 316.613, 316.614, 320.01, 322.01, 324.021, 403.717, 681.102, 320.08, 316.306, and 655.960.

This bill creates the following section of the Florida Statutes: 316.20655.

**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 Infrastructure and Security on February 3, 2020:**

The committee substitute:

- Removes obsolete language relating to bicycle helmets, leaving reference to the existing federal safety standard for bicycle helmets.
- Removes a current exclusion for a bicycle with a specified seat height from the definition of “bicycle,” thereby subjecting the described bicycles to bicycle regulations.
- Authorizes a county or municipality to enact an ordinance to regulate the operation of e-bikes on sidewalks and sidewalk areas when permissible under federal law if the ordinance restricts the maximum speed of an e-bike to 15 miles per hour.
- Provides that the new e-bike regulations may not be construed to prevent a local government from adopting an ordinance governing the operation of e-bikes on streets, highways, sidewalks, and sidewalk areas under the local government’s jurisdiction; or to prevent a municipality, county, or agency of the state having jurisdiction over a bicycle lane, bicycle path, multiuse path, or trail network from restricting or prohibiting the operation of an e-bike on such lanes, paths, or trail networks.
- Removes the provision requiring a municipality, county, or agency of the state having jurisdiction over a bicycle or multiuse path to provide notice and hold a public hearing before restricting or prohibiting the operation of an e-bike on the path if the entity finds that such a restriction is necessary in the interest of public safety or to comply with other laws or legal obligations.

- B. **Amendments:**

None.

By the Committee on Infrastructure and Security; and Senator Brandes

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1 A bill to be entitled  
 2 An act relating to electric bicycles; amending s.  
 3 261.03, F.S.; revising the definition of the term  
 4 "OHM" or "off-highway motorcycle"; amending s.  
 5 316.003, F.S.; revising definitions relating to the  
 6 Florida Uniform Traffic Control Law; defining the term  
 7 "electric bicycle"; amending s. 316.008, F.S.;  
 8 authorizing a county or municipality to enact an  
 9 ordinance regulating the operation of electric  
 10 bicycles on sidewalks or sidewalk areas when such use  
 11 is permissible under federal law; restricting the  
 12 speed of electric bicycles in such areas; amending s.  
 13 316.027, F.S.; revising the definition of the term  
 14 "vulnerable road user"; amending s. 316.083, F.S.;  
 15 requiring the driver of a vehicle overtaking an  
 16 electric bicycle to pass the electric bicycle at a  
 17 certain distance; amending s. 316.1995, F.S.;  
 18 expanding exceptions to a prohibition on persons  
 19 driving certain vehicles on sidewalks and bicycle  
 20 paths; amending s. 316.2065, F.S.; deleting obsolete  
 21 language; creating s. 316.20655, F.S.; providing  
 22 electric bicycle regulations; providing for rights and  
 23 privileges of electric bicycles and operators of  
 24 electric bicycles; providing that electric bicycles  
 25 are vehicles to the same extent as bicycles; providing  
 26 construction; providing that electric bicycles and  
 27 operators of electric bicycles are not subject to  
 28 specified provisions; requiring manufacturers and  
 29 distributors, beginning on a specified date, to apply

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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30 a label containing certain information to each  
 31 electric bicycle; prohibiting persons from tampering  
 32 with or modifying electric bicycles for certain  
 33 purposes; providing an exception; requiring electric  
 34 bicycles to comply with specified provisions of law;  
 35 requiring electric bicycles to operate in a manner  
 36 that meets certain requirements; authorizing operators  
 37 to ride electric bicycles where bicycles are allowed;  
 38 amending ss. 316.613, 316.614, and 320.01, F.S.;  
 39 revising the definition of the term "motor vehicle";  
 40 amending s. 322.01, F.S.; revising the definitions of  
 41 the terms "motor vehicle" and "vehicle"; amending ss.  
 42 324.021, 403.717, and 681.102, F.S.; revising the  
 43 definition of the term "motor vehicle"; amending s.  
 44 320.08, F.S.; conforming a provision to changes made  
 45 by the act; amending ss. 316.306 and 655.960, F.S.;  
 46 conforming cross-references; providing an effective  
 47 date.  
 48  
 49 Be It Enacted by the Legislature of the State of Florida:  
 50  
 51 Section 1. Subsection (4) of section 261.03, Florida  
 52 Statutes, is amended to read:  
 53 261.03 Definitions.—As used in this chapter, the term:  
 54 (4) "OHM" or "off-highway motorcycle" means any motor  
 55 vehicle used off the roads or highways of this state that has a  
 56 seat or saddle for the use of the rider and is designed to  
 57 travel with not more than two wheels in contact with the ground,  
 58 but excludes a tractor, an electric bicycle, or a moped.

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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59 Section 2. Present subsections (22) through (104) of  
60 section 316.003, Florida Statutes, are redesignated as  
61 subsections (23) through (105), respectively, a new subsection  
62 (22) is added to that section, and subsection (4) and present  
63 subsections (41), (43), (44), (45), and (61) of that section are  
64 amended, to read:

65 316.003 Definitions.—The following words and phrases, when  
66 used in this chapter, shall have the meanings respectively  
67 ascribed to them in this section, except where the context  
68 otherwise requires:

69 (4) BICYCLE.—Every vehicle propelled solely by human power,  
70 and every motorized bicycle propelled by a combination of human  
71 power and an electric helper motor capable of propelling the  
72 vehicle at a speed of not more than 20 miles per hour on level  
73 ground upon which any person may ride, having two tandem wheels,  
74 and including any device generally recognized as a bicycle  
75 though equipped with two front or two rear wheels. The term does  
76 not include such a vehicle with a seat height of no more than 25  
77 inches from the ground when the seat is adjusted to its highest  
78 position or a scooter or similar device. A person under the age  
79 of 16 may not operate or ride upon a motorized bicycle.

80 (22) ELECTRIC BICYCLE.—A bicycle or tricycle equipped with  
81 fully operable pedals, a seat or saddle for the use of the  
82 rider, and an electric motor of less than 750 watts which meets  
83 the requirements of one of the following three classifications:

84 (a) "Class 1 electric bicycle" means an electric bicycle  
85 equipped with a motor that provides assistance only when the  
86 rider is pedaling and that ceases to provide assistance when the  
87 electric bicycle reaches the speed of 20 miles per hour.

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88 (b) "Class 2 electric bicycle" means an electric bicycle  
89 equipped with a motor that may be used exclusively to propel the  
90 electric bicycle and that ceases to provide assistance when the  
91 electric bicycle reaches the speed of 20 miles per hour.

92 (c) "Class 3 electric bicycle" means an electric bicycle  
93 equipped with a motor that provides assistance only when the  
94 rider is pedaling and that ceases to provide assistance when the  
95 electric bicycle reaches the speed of 28 miles per hour.

96 (42)(41) MOPED.—Any vehicle with pedals to permit  
97 propulsion by human power, having a seat or saddle for the use  
98 of the rider and designed to travel on not more than three  
99 wheels, with a motor rated not in excess of 2 brake horsepower  
100 and not capable of propelling the vehicle at a speed greater  
101 than 30 miles per hour on level ground and with a power-drive  
102 system that functions directly or automatically without  
103 clutching or shifting gears by the operator after the drive  
104 system is engaged. If an internal combustion engine is used, the  
105 displacement may not exceed 50 cubic centimeters. The term does  
106 not include an electric bicycle.

107 (44)(43) MOTOR VEHICLE.—Except when used in s. 316.1001, a  
108 self-propelled vehicle not operated upon rails or guideway, but  
109 not including any bicycle, electric bicycle, motorized scooter,  
110 electric personal assistive mobility device, mobile carrier,  
111 personal delivery device, swamp buggy, or moped. For purposes of  
112 s. 316.1001, "motor vehicle" has the same meaning as provided in  
113 s. 320.01(1)(a).

114 (45)(44) MOTORCYCLE.—Any motor vehicle having a seat or  
115 saddle for the use of the rider and designed to travel on not  
116 more than three wheels in contact with the ground. The term

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117 includes an autocycle, but does not include a tractor, a moped,  
 118 an electric bicycle, or any vehicle in which the operator is  
 119 enclosed by a cabin unless it meets the requirements set forth  
 120 by the National Highway Traffic Safety Administration for a  
 121 motorcycle.

122 ~~(46)(45)~~ MOTORIZED SCOOTER.—Any vehicle or micromobility  
 123 device that is powered by a motor with or without a seat or  
 124 saddle for the use of the rider, which is designed to travel on  
 125 not more than three wheels, and which is not capable of  
 126 propelling the vehicle at a speed greater than 20 miles per hour  
 127 on level ground. The term does not include an electric bicycle.

128 ~~(62)(61)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise  
 129 provided in paragraph ~~(84)(b)~~ ~~(83)(b)~~, any privately owned way  
 130 or place used for vehicular travel by the owner and those having  
 131 express or implied permission from the owner, but not by other  
 132 persons.

133 Section 3. Paragraph (a) of subsection (7) of section  
 134 316.008, Florida Statutes, is amended to read:

135 316.008 Powers of local authorities.—

136 (7) (a) A county or municipality may enact an ordinance to  
 137 permit, control, or regulate the operation of vehicles, golf  
 138 carts, mopeds, motorized scooters, electric bicycles, and  
 139 electric personal assistive mobility devices on sidewalks or  
 140 sidewalk areas when such use is permissible under federal law.  
 141 The ordinance must restrict such vehicles or devices to a  
 142 maximum speed of 15 miles per hour in such areas.

143 Section 4. Paragraph (b) of subsection (1) of section  
 144 316.027, Florida Statutes, is amended to read:

145 316.027 Crash involving death or personal injuries.—

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146 (1) As used in this section, the term:

147 (b) "Vulnerable road user" means:

148 1. A pedestrian, including a person actually engaged in  
 149 work upon a highway, or in work upon utility facilities along a  
 150 highway, or engaged in the provision of emergency services  
 151 within the right-of-way;

152 2. A person operating a bicycle, an electric bicycle, a  
 153 motorcycle, a scooter, or a moped lawfully on the roadway;

154 3. A person riding an animal; or

155 4. A person lawfully operating on a public right-of-way,  
 156 crosswalk, or shoulder of the roadway:

157 a. A farm tractor or similar vehicle designed primarily for  
 158 farm use;

159 b. A skateboard, roller skates, or in-line skates;

160 c. A horse-drawn carriage;

161 d. An electric personal assistive mobility device; or

162 e. A wheelchair.

163 Section 5. Subsection (1) of section 316.083, Florida  
 164 Statutes, is amended to read:

165 316.083 Overtaking and passing a vehicle.—The following  
 166 rules shall govern the overtaking and passing of vehicles  
 167 proceeding in the same direction, subject to those limitations,  
 168 exceptions, and special rules hereinafter stated:

169 (1) The driver of a vehicle overtaking another vehicle  
 170 proceeding in the same direction shall give an appropriate  
 171 signal as provided for in s. 316.156, shall pass to the left  
 172 thereof at a safe distance, and shall not again drive to the  
 173 right side of the roadway until safely clear of the overtaken  
 174 vehicle. The driver of a vehicle overtaking a bicycle or other

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175 nonmotorized vehicle, or an electric bicycle, must pass the  
 176 bicycle, ~~or~~ other nonmotorized vehicle, or electric bicycle at a  
 177 safe distance of not less than 3 feet between the vehicle and  
 178 the bicycle, ~~or~~ other nonmotorized vehicle, or electric bicycle.

179 Section 6. Section 316.1995, Florida Statutes, is amended  
 180 to read:

181 316.1995 Driving upon sidewalk or bicycle path.—

182 (1) Except as provided in s. 316.008, s. 316.20655, s.  
 183 316.212(8), or s. 316.2128, a person may not drive any vehicle  
 184 other than by human power upon a bicycle path, sidewalk, or  
 185 sidewalk area, except upon a permanent or duly authorized  
 186 temporary driveway.

187 (2) A violation of this section is a noncriminal traffic  
 188 infraction, punishable as a moving violation as provided in  
 189 chapter 318.

190 (3) This section does not apply to motorized wheelchairs.

191 Section 7. Paragraph (d) of subsection (3) of section  
 192 316.2065, Florida Statutes, is amended to read:

193 316.2065 Bicycle regulations.—

194 (3)

195 (d) A bicycle rider or passenger who is under 16 years of  
 196 age must wear a bicycle helmet that is properly fitted and is  
 197 fastened securely upon the passenger's head by a strap and that  
 198 meets the federal safety standard for bicycle helmets, final  
 199 rule, 16 C.F.R. part 1203. ~~A helmet purchased before October 1,  
 200 2012, which meets the standards of the American National  
 201 Standards Institute (ANSI Z 90.4 Bicycle Helmet Standards), the  
 202 standards of the Snell Memorial Foundation (1984 Standard for  
 203 Protective Headgear for Use in Bicycling), or any other~~

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204 ~~nationally recognized standards for bicycle helmets adopted by~~  
 205 ~~the department may continue to be worn by a bicycle rider or~~  
 206 ~~passenger until January 1, 2016.~~ As used in this subsection, the  
 207 term "passenger" includes a child who is riding in a trailer or  
 208 semitrailer attached to a bicycle.

209 Section 8. Section 316.20655, Florida Statutes, is created  
 210 to read:

211 316.20655 Electric bicycle regulations.—

212 (1) Except as otherwise provided in this section, an  
 213 electric bicycle or an operator of an electric bicycle shall be  
 214 afforded all the rights and privileges, and be subject to all of  
 215 the duties, of a bicycle or the operator of a bicycle, including  
 216 those identified in s. 316.2065. An electric bicycle is a  
 217 vehicle to the same extent as a bicycle. However, this section  
 218 may not be construed to prevent a local government, through the  
 219 exercise of its powers under s. 316.008, from adopting an  
 220 ordinance governing the operation of electric bicycles on  
 221 streets, highways, sidewalks, and sidewalk areas that are under  
 222 the local government's jurisdiction; or to prevent a  
 223 municipality, county, or agency of the state having jurisdiction  
 224 over a bicycle lane, bicycle path, multiuse path, or trail  
 225 network from restricting or prohibiting the operation of an  
 226 electric bicycle on a bicycle lane, bicycle path, multiuse path,  
 227 or trail network.

228 (2) An electric bicycle or an operator of an electric  
 229 bicycle is not subject to the provisions of law relating to  
 230 financial responsibility, driver or motor vehicle licenses,  
 231 vehicle registration, title certificates, off-highway  
 232 motorcycles, or off-highway vehicles.

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233 (3) Beginning on January 1, 2021, manufacturers and  
 234 distributors of electric bicycles shall apply a label that is  
 235 permanently affixed in a prominent location to each electric  
 236 bicycle. The label must contain the classification number, top  
 237 assisted speed, and motor wattage of the electric bicycle.

238 (4) A person may not tamper with or modify an electric  
 239 bicycle so as to change the motor-powered speed capability or  
 240 engagement of an electric bicycle, unless the label indicating  
 241 the classification number required in subsection (3) is replaced  
 242 after such modification.

243 (5) An electric bicycle must comply with the equipment and  
 244 manufacturing requirements for bicycles adopted by the United  
 245 States Consumer Product Safety Commission under 16 C.F.R. part  
 246 1512.

247 (6) An electric bicycle must operate in a manner so that  
 248 the electric motor is disengaged or ceases to function when the  
 249 rider stops pedaling or when the brakes are applied.

250 (7) An operator may ride an electric bicycle where bicycles  
 251 are allowed, including, but not limited to, streets, highways,  
 252 roadways, shoulders, bicycle lanes, and bicycle or multiuse  
 253 paths.

254 Section 9. Paragraph (e) of subsection (2) of section  
 255 316.613, Florida Statutes, is amended to read:

256 316.613 Child restraint requirements.—

257 (2) As used in this section, the term “motor vehicle” means  
 258 a motor vehicle as defined in s. 316.003 that is operated on the  
 259 roadways, streets, and highways of the state. The term does not  
 260 include:

261 (e) A motorcycle, a moped, a ~~or~~ bicycle, or an electric

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262 bicycle.

263 Section 10. Paragraph (a) of subsection (3) of section  
 264 316.614, Florida Statutes, is amended to read:

265 316.614 Safety belt usage.—

266 (3) As used in this section:

267 (a) “Motor vehicle” means a motor vehicle as defined in s.  
 268 316.003 which is operated on the roadways, streets, and highways  
 269 of this state. The term does not include:

270 1. A school bus.

271 2. A bus used for the transportation of persons for  
 272 compensation.

273 3. A farm tractor or implement of husbandry.

274 4. A truck having a gross vehicle weight rating of more  
 275 than 26,000 pounds.

276 5. A motorcycle, a moped, a ~~or~~ bicycle, or an electric  
 277 bicycle.

278 Section 11. Paragraph (a) of subsection (1) of section  
 279 320.01, Florida Statutes, is amended to read:

280 320.01 Definitions, general.—As used in the Florida  
 281 Statutes, except as otherwise provided, the term:

282 (1) “Motor vehicle” means:

283 (a) An automobile, motorcycle, truck, trailer, semitrailer,  
 284 truck tractor and semitrailer combination, or any other vehicle  
 285 operated on the roads of this state, used to transport persons  
 286 or property, and propelled by power other than muscular power,  
 287 but the term does not include traction engines, road rollers,  
 288 motorized scooters, micromobility devices, personal delivery  
 289 devices and mobile carriers as defined in s. 316.003, special  
 290 mobile equipment as defined in s. 316.003, vehicles that run

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291 only upon a track, bicycles, electric bicycles, swamp buggies,  
292 or mopeds.

293 Section 12. Subsections (27) and (44) of section 322.01,  
294 Florida Statutes, are amended to read:

295 322.01 Definitions.—As used in this chapter:

296 (27) "Motor vehicle" means any self-propelled vehicle,  
297 including a motor vehicle combination, not operated upon rails  
298 or guideway, excluding vehicles moved solely by human power,  
299 motorized wheelchairs, and electric ~~motorized~~ bicycles as  
300 defined in s. 316.003.

301 (44) "Vehicle" means every device in, upon, or by which any  
302 person or property is or may be transported or drawn upon a  
303 public highway or operated upon rails or guideway, except a  
304 bicycle, motorized wheelchair, or electric ~~motorized~~ bicycle.

305 Section 13. Subsection (1) of section 324.021, Florida  
306 Statutes, is amended to read:

307 324.021 Definitions; minimum insurance required.—The  
308 following words and phrases when used in this chapter shall, for  
309 the purpose of this chapter, have the meanings respectively  
310 ascribed to them in this section, except in those instances  
311 where the context clearly indicates a different meaning:

312 (1) MOTOR VEHICLE.—Every self-propelled vehicle that is  
313 designed and required to be licensed for use upon a highway,  
314 including trailers and semitrailers designed for use with such  
315 vehicles, except traction engines, road rollers, farm tractors,  
316 power shovels, and well drillers, and every vehicle that is  
317 propelled by electric power obtained from overhead wires but not  
318 operated upon rails, but not including any personal delivery  
319 device or mobile carrier as defined in s. 316.003, bicycle,

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320 electric bicycle, or moped. However, the term "motor vehicle"  
321 does not include a motor vehicle as defined in s. 627.732(3)  
322 when the owner of such vehicle has complied with the  
323 requirements of ss. 627.730-627.7405, inclusive, unless the  
324 provisions of s. 324.051 apply; and, in such case, the  
325 applicable proof of insurance provisions of s. 320.02 apply.

326 Section 14. Paragraph (b) of subsection (1) of section  
327 403.717, Florida Statutes, is amended to read:

328 403.717 Waste tire and lead-acid battery requirements.—

329 (1) For purposes of this section and ss. 403.718 and  
330 403.7185:

331 (b) "Motor vehicle" means an automobile, motorcycle, truck,  
332 trailer, semitrailer, truck tractor and semitrailer combination,  
333 or any other vehicle operated in this state, used to transport  
334 persons or property and propelled by power other than muscular  
335 power. The term does not include traction engines, road rollers,  
336 vehicles that run only upon a track, bicycles, electric  
337 bicycles, mopeds, or farm tractors and trailers.

338 Section 15. Subsection (14) of section 681.102, Florida  
339 Statutes, is amended to read:

340 681.102 Definitions.—As used in this chapter, the term:

341 (14) "Motor vehicle" means a new vehicle, propelled by  
342 power other than muscular power, which is sold in this state to  
343 transport persons or property, and includes a recreational  
344 vehicle or a vehicle used as a demonstrator or leased vehicle if  
345 a manufacturer's warranty was issued as a condition of sale, or  
346 the lessee is responsible for repairs, but does not include  
347 vehicles run only upon tracks, off-road vehicles, trucks over  
348 10,000 pounds gross vehicle weight, motorcycles, mopeds,

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349 electric bicycles, or the living facilities of recreational  
 350 vehicles. "Living facilities of recreational vehicles" are those  
 351 portions designed, used, or maintained primarily as living  
 352 quarters and include, but are not limited to, the flooring,  
 353 plumbing system and fixtures, roof air conditioner, furnace,  
 354 generator, electrical systems other than automotive circuits,  
 355 the side entrance door, exterior compartments, and windows other  
 356 than the windshield and driver and front passenger windows.

357 Section 16. Section 320.08, Florida Statutes, is amended to  
 358 read:

359 320.08 License taxes.—Except as otherwise provided herein,  
 360 there are hereby levied and imposed annual license taxes for the  
 361 operation of motor vehicles, mopeds, ~~motorized bicycles as~~  
 362 ~~defined in s. 316.003(4)~~, tri-vehicles as defined in s. 316.003,  
 363 and mobile homes as defined in s. 320.01, which shall be paid to  
 364 and collected by the department or its agent upon the  
 365 registration or renewal of registration of the following:

366 (1) MOTORCYCLES AND MOPEDS.—

367 (a) Any motorcycle: \$10 flat.

368 (b) Any moped: \$5 flat.

369 (c) Upon registration of a motorcycle, motor-driven cycle,  
 370 or moped, in addition to the license taxes specified in this  
 371 subsection, a nonrefundable motorcycle safety education fee in  
 372 the amount of \$2.50 shall be paid. The proceeds of such  
 373 additional fee shall be deposited in the Highway Safety  
 374 Operating Trust Fund to fund a motorcycle driver improvement  
 375 program implemented pursuant to s. 322.025, the Florida  
 376 Motorcycle Safety Education Program established in s. 322.0255,  
 377 or the general operations of the department.

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378 (d) An ancient or antique motorcycle: \$7.50 flat.

379 (2) AUTOMOBILES OR TRI-VEHICLES FOR PRIVATE USE.—

380 (a) An ancient or antique automobile, as defined in s.

381 320.086, or a street rod, as defined in s. 320.0863: \$7.50 flat.

382 (b) Net weight of less than 2,500 pounds: \$14.50 flat.

383 (c) Net weight of 2,500 pounds or more, but less than 3,500  
 384 pounds: \$22.50 flat.

385 (d) Net weight of 3,500 pounds or more: \$32.50 flat.

386 (3) TRUCKS.—

387 (a) Net weight of less than 2,000 pounds: \$14.50 flat.

388 (b) Net weight of 2,000 pounds or more, but not more than  
 389 3,000 pounds: \$22.50 flat.

390 (c) Net weight more than 3,000 pounds, but not more than  
 391 5,000 pounds: \$32.50 flat.

392 (d) A truck defined as a "goat," or other vehicle if used  
 393 in the field by a farmer or in the woods for the purpose of  
 394 harvesting a crop, including naval stores, during such  
 395 harvesting operations, and which is not principally operated  
 396 upon the roads of the state: \$7.50 flat. The term "goat" means a  
 397 motor vehicle designed, constructed, and used principally for  
 398 the transportation of citrus fruit within citrus groves or for  
 399 the transportation of crops on farms, and which can also be used  
 400 for hauling associated equipment or supplies, including required  
 401 sanitary equipment, and the towing of farm trailers.

402 (e) An ancient or antique truck, as defined in s. 320.086:  
 403 \$7.50 flat.

404 (4) HEAVY TRUCKS, TRUCK TRACTORS, FEES ACCORDING TO GROSS  
 405 VEHICLE WEIGHT.—

406 (a) Gross vehicle weight of 5,001 pounds or more, but less

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407 than 6,000 pounds: \$60.75 flat.  
 408 (b) Gross vehicle weight of 6,000 pounds or more, but less  
 409 than 8,000 pounds: \$87.75 flat.  
 410 (c) Gross vehicle weight of 8,000 pounds or more, but less  
 411 than 10,000 pounds: \$103 flat.  
 412 (d) Gross vehicle weight of 10,000 pounds or more, but less  
 413 than 15,000 pounds: \$118 flat.  
 414 (e) Gross vehicle weight of 15,000 pounds or more, but less  
 415 than 20,000 pounds: \$177 flat.  
 416 (f) Gross vehicle weight of 20,000 pounds or more, but less  
 417 than 26,001 pounds: \$251 flat.  
 418 (g) Gross vehicle weight of 26,001 pounds or more, but less  
 419 than 35,000: \$324 flat.  
 420 (h) Gross vehicle weight of 35,000 pounds or more, but less  
 421 than 44,000 pounds: \$405 flat.  
 422 (i) Gross vehicle weight of 44,000 pounds or more, but less  
 423 than 55,000 pounds: \$773 flat.  
 424 (j) Gross vehicle weight of 55,000 pounds or more, but less  
 425 than 62,000 pounds: \$916 flat.  
 426 (k) Gross vehicle weight of 62,000 pounds or more, but less  
 427 than 72,000 pounds: \$1,080 flat.  
 428 (l) Gross vehicle weight of 72,000 pounds or more: \$1,322  
 429 flat.  
 430 (m) Notwithstanding the declared gross vehicle weight, a  
 431 truck tractor used within the state or within a 150-mile radius  
 432 of its home address is eligible for a license plate for a fee of  
 433 \$324 flat if:  
 434 1. The truck tractor is used exclusively for hauling  
 435 forestry products; or

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436 2. The truck tractor is used primarily for the hauling of  
 437 forestry products, and is also used for the hauling of  
 438 associated forestry harvesting equipment used by the owner of  
 439 the truck tractor.  
 440 (n) A truck tractor or heavy truck, not operated as a for-  
 441 hire vehicle and which is engaged exclusively in transporting  
 442 raw, unprocessed, and nonmanufactured agricultural or  
 443 horticultural products within the state or within a 150-mile  
 444 radius of its home address is eligible for a restricted license  
 445 plate for a fee of:  
 446 1. If such vehicle's declared gross vehicle weight is less  
 447 than 44,000 pounds, \$87.75 flat.  
 448 2. If such vehicle's declared gross vehicle weight is  
 449 44,000 pounds or more and such vehicle only transports from the  
 450 point of production to the point of primary manufacture; to the  
 451 point of assembling the same; or to a shipping point of a rail,  
 452 water, or motor transportation company, \$324 flat.  
 453  
 454 Such not-for-hire truck tractors and heavy trucks used  
 455 exclusively in transporting raw, unprocessed, and  
 456 nonmanufactured agricultural or horticultural products may be  
 457 incidentally used to haul farm implements and fertilizers  
 458 delivered direct to the growers. The department may require any  
 459 documentation deemed necessary to determine eligibility before  
 460 issuance of this license plate. For the purpose of this  
 461 paragraph, "not-for-hire" means the owner of the motor vehicle  
 462 must also be the owner of the raw, unprocessed, and  
 463 nonmanufactured agricultural or horticultural product, or the  
 464 user of the farm implements and fertilizer being delivered.

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465 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;  
466 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

467 (a)1. A semitrailer drawn by a GVW truck tractor by means  
468 of a fifth-wheel arrangement: \$13.50 flat per registration year  
469 or any part thereof.

470 2. A semitrailer drawn by a GVW truck tractor by means of a  
471 fifth-wheel arrangement: \$68 flat per permanent registration.

472 (b) A motor vehicle equipped with machinery and designed  
473 for the exclusive purpose of well drilling, excavation,  
474 construction, spraying, or similar activity, and which is not  
475 designed or used to transport loads other than the machinery  
476 described above over public roads: \$44 flat.

477 (c) A school bus used exclusively to transport pupils to  
478 and from school or school or church activities or functions  
479 within their own county: \$41 flat.

480 (d) A wrecker, as defined in s. 320.01, which is used to  
481 tow a vessel as defined in s. 327.02, a disabled, abandoned,  
482 stolen-recovered, or impounded motor vehicle as defined in s.  
483 320.01, or a replacement motor vehicle as defined in s. 320.01:  
484 \$41 flat.

485 (e) A wrecker that is used to tow any nondisabled motor  
486 vehicle, a vessel, or any other cargo unless used as defined in  
487 paragraph (d), as follows:

488 1. Gross vehicle weight of 10,000 pounds or more, but less  
489 than 15,000 pounds: \$118 flat.

490 2. Gross vehicle weight of 15,000 pounds or more, but less  
491 than 20,000 pounds: \$177 flat.

492 3. Gross vehicle weight of 20,000 pounds or more, but less  
493 than 26,000 pounds: \$251 flat.

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494 4. Gross vehicle weight of 26,000 pounds or more, but less  
495 than 35,000 pounds: \$324 flat.

496 5. Gross vehicle weight of 35,000 pounds or more, but less  
497 than 44,000 pounds: \$405 flat.

498 6. Gross vehicle weight of 44,000 pounds or more, but less  
499 than 55,000 pounds: \$772 flat.

500 7. Gross vehicle weight of 55,000 pounds or more, but less  
501 than 62,000 pounds: \$915 flat.

502 8. Gross vehicle weight of 62,000 pounds or more, but less  
503 than 72,000 pounds: \$1,080 flat.

504 9. Gross vehicle weight of 72,000 pounds or more: \$1,322  
505 flat.

506 (f) A hearse or ambulance: \$40.50 flat.

507 (6) MOTOR VEHICLES FOR HIRE.—

508 (a) Under nine passengers: \$17 flat plus \$1.50 per cwt.

509 (b) Nine passengers and over: \$17 flat plus \$2 per cwt.

510 (7) TRAILERS FOR PRIVATE USE.—

511 (a) Any trailer weighing 500 pounds or less: \$6.75 flat per  
512 year or any part thereof.

513 (b) Net weight over 500 pounds: \$3.50 flat plus \$1 per cwt.

514 (8) TRAILERS FOR HIRE.—

515 (a) Net weight under 2,000 pounds: \$3.50 flat plus \$1.50  
516 per cwt.

517 (b) Net weight 2,000 pounds or more: \$13.50 flat plus \$1.50  
518 per cwt.

519 (9) RECREATIONAL VEHICLE-TYPE UNITS.—

520 (a) A travel trailer or fifth-wheel trailer, as defined by  
521 s. 320.01(1)(b), that does not exceed 35 feet in length: \$27  
522 flat.

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523 (b) A camping trailer, as defined by s. 320.01(1)(b)2.:

524 \$13.50 flat.

525 (c) A motor home, as defined by s. 320.01(1)(b)4.:

526 1. Net weight of less than 4,500 pounds: \$27 flat.

527 2. Net weight of 4,500 pounds or more: \$47.25 flat.

528 (d) A truck camper as defined by s. 320.01(1)(b)3.:

529 1. Net weight of less than 4,500 pounds: \$27 flat.

530 2. Net weight of 4,500 pounds or more: \$47.25 flat.

531 (e) A private motor coach as defined by s. 320.01(1)(b)5.:

532 1. Net weight of less than 4,500 pounds: \$27 flat.

533 2. Net weight of 4,500 pounds or more: \$47.25 flat.

534 (10) PARK TRAILERS; TRAVEL TRAILERS; FIFTH-WHEEL TRAILERS;

535 35 FEET TO 40 FEET.—

536 (a) *Park trailers.*—Any park trailer, as defined in s.

537 320.01(1)(b)7.: \$25 flat.

538 (b) *Travel trailers or fifth-wheel trailers.*—A travel

539 trailer or fifth-wheel trailer, as defined in s. 320.01(1)(b),

540 that exceeds 35 feet: \$25 flat.

541 (11) MOBILE HOMES.—

542 (a) A mobile home not exceeding 35 feet in length: \$20

543 flat.

544 (b) A mobile home over 35 feet in length, but not exceeding

545 40 feet: \$25 flat.

546 (c) A mobile home over 40 feet in length, but not exceeding

547 45 feet: \$30 flat.

548 (d) A mobile home over 45 feet in length, but not exceeding

549 50 feet: \$35 flat.

550 (e) A mobile home over 50 feet in length, but not exceeding

551 55 feet: \$40 flat.

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552 (f) A mobile home over 55 feet in length, but not exceeding

553 60 feet: \$45 flat.

554 (g) A mobile home over 60 feet in length, but not exceeding

555 65 feet: \$50 flat.

556 (h) A mobile home over 65 feet in length: \$80 flat.

557 (12) DEALER AND MANUFACTURER LICENSE PLATES.—A franchised

558 motor vehicle dealer, independent motor vehicle dealer, marine

559 boat trailer dealer, or mobile home dealer and manufacturer

560 license plate: \$17 flat.

561 (13) EXEMPT OR OFFICIAL LICENSE PLATES.—Any exempt or

562 official license plate: \$4 flat, except that the registration or

563 renewal of a registration of a marine boat trailer exempt under

564 s. 320.102 is not subject to any license tax.

565 (14) LOCALLY OPERATED MOTOR VEHICLES FOR HIRE.—A motor

566 vehicle for hire operated wholly within a city or within 25

567 miles thereof: \$17 flat plus \$2 per cwt.

568 (15) TRANSPORTER.—Any transporter license plate issued to a

569 transporter pursuant to s. 320.133: \$101.25 flat.

570 Section 17. Paragraph (a) of subsection (3) of section

571 316.306, Florida Statutes, is amended to read:

572 316.306 School and work zones; prohibition on the use of a

573 wireless communications device in a handheld manner.—

574 (3)(a)1. A person may not operate a motor vehicle while

575 using a wireless communications device in a handheld manner in a

576 designated school crossing, school zone, or work zone area as

577 defined in s. 316.003(105) ~~s. 316.003(104)~~. This subparagraph

578 shall only be applicable to work zone areas if construction

579 personnel are present or are operating equipment on the road or

580 immediately adjacent to the work zone area. For the purposes of

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581 this paragraph, a motor vehicle that is stationary is not being  
582 operated and is not subject to the prohibition in this  
583 paragraph.

584 2.a. During the period from October 1, 2019, through  
585 December 31, 2019, a law enforcement officer may stop motor  
586 vehicles to issue verbal or written warnings to persons who are  
587 in violation of subparagraph 1. for the purposes of informing  
588 and educating such persons of this section. This sub-  
589 subparagraph shall stand repealed on October 1, 2020.

590 b. Effective January 1, 2020, a law enforcement officer may  
591 stop motor vehicles and issue citations to persons who are  
592 driving while using a wireless communications device in a  
593 handheld manner in violation of subparagraph 1.

594 Section 18. Subsection (1) of section 655.960, Florida  
595 Statutes, is amended to read:

596 655.960 Definitions; ss. 655.960-655.965.—As used in this  
597 section and ss. 655.961-655.965, unless the context otherwise  
598 requires:

599 (1) "Access area" means any paved walkway or sidewalk which  
600 is within 50 feet of any automated teller machine. The term does  
601 not include any street or highway open to the use of the public,  
602 as defined in s. 316.003(84) (a) or (b) ~~s. 316.003(83) (a) or (b)~~,  
603 including any adjacent sidewalk, as defined in s. 316.003.

604 Section 19. This act shall take effect July 1, 2020.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 12, 2020

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I respectfully request that **Senate Bill #1148**, relating to **Electric Bicycles**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 24

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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**BILL:** CS/CS/CS/SB 1464

**INTRODUCER:** Rules Committee; Banking and Insurance Committee; Infrastructure and Security Committee; and Senator Flores

**SUBJECT:** Underground Facility Damage Prevention and Safety

**DATE:** February 27, 2020

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Miller</u>	<u>IS</u>	<u>Fav/CS</u>
2.	<u>Palecki</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
3.	<u>Price</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 1464 amends provisions of law relating to the Underground Facility Damage Prevention and Safety Act, which is intended to identify and locate underground facilities, examples of which include pipes, pipelines, and cables, prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damages to those facilities. Specifically, the bill:

- Expands the list of entities that may issue citations for existing and new enhanced-penalty violations of ch. 556, F.S., to include the State Fire Marshal or his or her statutorily defined agents, and the fire chiefs of special districts, municipalities, and counties; and provides criminal penalties for willful failure to respond to a citation.
- Increases the maximum civil penalty (up to \$2,500, in addition to any other court costs) for certain violations of ch. 556, F.S., that involve an underground pipe or facility transporting hazardous materials regulated by the U.S.D.O.T. Pipeline and Hazardous Material Safety Administration (PHMSA). Eighty percent of the civil penalty will be distributed to the entity that issued the citation, and the remaining 20 percent will be retained by the clerk, in addition to any court costs.
- Requires each clerk of court to submit an annual report to the State Fire Marshal listing each violation notice written under ch. 556, F.S., which was filed in that county during the preceding calendar year.
- Provides a criminal penalty for knowingly and willfully removing or damaging a permanent marker.

- Requires member operators and excavators to transmit reports of incidents that involve high-priority subsurface installations (HPSI) for investigation by the State Fire Marshal, who replaces the Division of Administrative Hearings as the investigative authority. The State Fire Marshal may also issue a citation and impose a civil penalty for a violation of ch. 556, F.S., and 95 percent of any civil penalty imposed will be equally distributed between the Sunshine 811 system and the State Fire Marshal for specified uses. The remaining 5 percent is retained by the clerk of court to cover administrative costs.
- Requires Sunshine State One-Call of Florida, Inc., to review the reports submitted by the clerks of court to the State Fire Marshal, and any complaints of alleged violations of ch. 556, F.S., in order to identify issues and potential issues with damage prevention and enforcement. Sunshine State One-Call of Florida, Inc., is further required to submit an analysis of its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives on an annual basis.

The bill may have an indeterminate positive impact on state and local revenues. See the Fiscal Impact Statement for additional details.

The bill takes effect on July 1, 2020.

## II. Present Situation:

### Florida Underground Facility Damage Prevention and Safety Act

Chapter 556, F.S., is the “Underground Facility Damage Prevention and Safety Act” (Act). The stated purpose of the chapter is aid the public by preventing injury to persons or property and the interruption of services resulting from damage to an underground facility<sup>1</sup>, e.g., a pipeline or cable, caused by excavation or demolition operations.<sup>2</sup> The Act created Sunshine State One-Call of Florida, Inc. (Sunshine 811), a not-for-profit corporation intended to provide access for excavating contractors and the public to provide notification of their intent to engage in excavation or demolition.<sup>3</sup> Sunshine 811 is intended to provide member operators<sup>4</sup> an opportunity to identify and locate their underground facilities. All operators of underground facilities in the state are required to be member operators, and are required to use and participate in the system.<sup>5</sup>

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<sup>1</sup> Section 556.102(13), F.S., defines the term “underground facility” as “any public or private personal property which is buried, placed below ground, or submerged on any member operator’s right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage; electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to, pipelines, pipes, sewers, conduits, cables, valves, and lines. For purposes of this act, a liquefied petroleum gas line regulated under ch. 527 is not an underground facility unless such line is subject to the requirements of Title 49 C.F.R. adopted by the Department of Agriculture and Consumer Services, provided there is no encroachment on any member operator’s right-of-way, easement, or permitted use. Petroleum storage systems subject to regulation pursuant to ch. 376 are not considered underground facilities for the purposes of this act unless the storage system is located on a member operator’s right-of-way or easement. Storm drainage systems are not considered underground facilities.”

<sup>2</sup> Section 556.101(3), F.S.

<sup>3</sup> See ss. 556.101(2) and 556.103, F.S.

<sup>4</sup> Defined in s. 556.102(8), F.S., to mean “any person who furnishes or transports materials or services by means of an underground facility.”

<sup>5</sup> Section 556.103(1), F.S.

Sunshine 811 is required to provide a single toll-free telephone number (811) within Florida which excavators can use to notify member operators of planned excavation or demolition activities.<sup>6</sup> Excavators intending to conduct excavation or demolition must notify the system not less than 2 full business days before beginning operations that are not beneath the waters of the state, and not less than 10 full business days if the operation is beneath the waters of the state, with certain exceptions.<sup>7</sup> The person must also provide specified identification, location, and operational information, which remains valid for 30 calendar days.<sup>8</sup> Each notification is recorded to document compliance with the Act.<sup>9</sup>

Upon receipt of this notice, the system provides the notifying excavator with a list of the member operators who will be advised of the notification, along with a notification number to be provided to law enforcement upon request.<sup>10</sup> The system in turn notifies the potentially affected member operators of the planned excavation or demolition activities.<sup>11</sup> Within 2 full business days after the time the notification is received by the system (or 10 days if the proposed excavation is in proximity to facilities beneath state waters), potentially affected member operators must determine the location of their underground facilities in relation to the proposed excavation or demolition. If this cannot be done in this time period, the member operator must contact the person giving notice and negotiate a new schedule and time that is agreeable and does not unreasonably delay the excavator. If a member operator determines that a proposed excavation or demolition is in proximity to or conflicts with an underground facility, the member operator must identify the horizontal route of the facility in a specified manner.<sup>12</sup>

An excavator is required to delay excavations until the first of the following events occurs:

- Each member operator's underground facilities have been marked and located;
- The excavator has been notified that no member operator has underground facilities in the area described in the notice; or
- Expiration of the time allowed for markings.

If a member operator has not located and marked its underground facilities within the time allowed for marking, the excavator may proceed with the excavation, provided that the excavator does so with reasonable care and that detection equipment or other acceptable means to locate underground facilities are used. An excavator may not conduct demolition in an area until all member operators' underground facilities have been marked and located or removed.<sup>13</sup>

Violations of certain provisions of the Act are noncriminal infractions enforceable by citations issued by any local or state law enforcement officer, government code inspector, or code enforcement officer. Such infractions may result in a civil penalty of \$500, plus court costs.<sup>14</sup> Eighty percent of

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<sup>6</sup> Section 556.104, F.S.

<sup>7</sup> Section 556.105(1)(a), F.S. Member operators with state-owned underground facilities located within the right-of-way of a state highway need not be notified of excavation or demolition activities and are under no obligation to mark or locate facilities. Section 556.105(5), F.S.

<sup>8</sup> Section 556.105(1)(a)-(d), F.S.

<sup>9</sup> Section 556.105(2), F.S.

<sup>10</sup> Section 556.105(3) and (4), F.S.

<sup>11</sup> Section 556.105(5), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 556.105(6), F.S.

<sup>14</sup> Section 556.107(1)(a), F.S.

the civil penalty is distributed to the government entity whose employee issued the citation, with 20 percent of the penalty retained by the clerk of the court to cover administrative costs.<sup>15</sup>

### ***High Priority Subservice Installations***

In 2010, the Legislature established a special process to address damages to any facility identified as a “high-priority subsurface installation.”<sup>16</sup> High-priority subsurface installations are defined as “an underground gas transmission or gas distribution pipeline, an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid” that the pipeline’s operator has identified as critical.<sup>17</sup> If an alleged violation of a required procedure involves damage to a high-priority subsurface installation and the damage results in death or serious bodily injury, or results in property damage, including service-restoration costs, of more than \$50,000, or interruption of service to at least 2,500 customers, the incident must be reported to Sunshine 811 by the excavator or member operator within 24 hours.<sup>18</sup> Sunshine 811 must then transmit an incident report to the Division of Administrative Hearings (DOAH) for a hearing to determine whether a violation of required procedure was the proximate cause of the incident. If DOAH finds that a violation was the proximate cause of the incident, it may impose a fine not to exceed \$50,000 (or \$10,000 if a state agency or political subdivision caused the incident).<sup>19</sup> Funds collected from a fine issued by DOAH are paid to Sunshine 811 to cover its costs related to DOAH’s services, and any remaining funds may be used only for damage-prevention education.<sup>20</sup>

### ***Reporting Requirements and Results***

By March 31 of each year, each clerk of court must submit a report to Sunshine 811 listing each violation notice written under s. 556.107(1)(a), F.S., which was filed in that county during the preceding calendar year.<sup>21</sup> The report must state the name and address of the member or excavator who committed each infraction and indicate whether or not the civil penalty for the infraction was paid.<sup>22</sup> The Sunshine 811 board must submit an annual progress report to the President of the Senate, the Speaker of the House of Representative, and the Governor, no later than 60 days before the convening of each regular session of the Legislature.<sup>23</sup> This report must include a summary of the reports provided by the clerks of court, a summary of damage data reported to the system for the prior year, and any analysis of this data by the board.<sup>24</sup>

In 2017, the Legislature established additional reporting requirements. First, an excavator must immediately call 911 to report any contact with or damage to an underground facility that results in the escape of natural gas or other hazardous substance or material regulated by the U.S. Department of Transportation (DOT) Pipeline and Hazardous Material Safety Administration

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<sup>15</sup> Section 556.107(1)(c), F.S.

<sup>16</sup> Ch. 2010-100, L.O.F., s. 10.

<sup>17</sup> Section 556.116(1)(b), F.S.

<sup>18</sup> Section 556.116, F.S.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Section 556.107(2), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 556.103(5), F.S.

<sup>24</sup> *Id.*

(PHMSA). Second, if an event damages any pipe, cable, or other underground facility, the member operator must file a report with Sunshine 811.<sup>25</sup>

In its most recent Annual Report, Sunshine 811 indicates that 16,576 damage incidents were reported in 2018, while 13 citations were issued by entities authorized to enforce the Act.<sup>26</sup> These citations resulted in \$6,602.50 of fines being levied. Further, the Annual Report identifies one case referred to DOAH involving damage to a natural gas distribution main. In that case, DOAH found that the excavator's failure to notify Sunshine 811 prior to excavation was the proximate cause of the incident and imposed a \$5,000 fine.<sup>27</sup>

### **U.S.D.O.T. Pipeline and Hazardous Material Safety Administration – Pipeline Damage Prevention Programs**

The United States Department of Transportation has back-stop authority to conduct administrative civil enforcement proceedings against excavators who damage hazardous liquid and natural gas pipelines in a state that has failed to adequately enforce its excavation damage prevention or one-call laws.<sup>28</sup>

On July 13, 2015, the Pipeline and Hazardous Material Safety Administration (PHMSA) announced the issuance of a final rule to establish the process for evaluating state excavation damage prevention law enforcement programs and enforcing minimum federal damage prevention standards in states where damage prevention law enforcement is deemed inadequate or does not exist.<sup>29</sup>

Under its rule, PHMSA uses the following criteria in evaluating the effectiveness of a state damage prevention program:

- Does the state have the authority to enforce its state excavation damage prevention law using civil penalties and other appropriate sanctions for violations?
- Has the state designated a state agency or other body as the authority responsible for enforcement of the state excavation damage prevention law?
- Is the state assessing civil penalties and other appropriate sanctions for violations at levels sufficient to deter noncompliance and is the state making publicly available information that demonstrates the effectiveness of the state's enforcement program?
- Does the enforcement authority (if one exists) have a reliable mechanism (e.g., mandatory reporting, complaint driven reporting) for learning about excavation damage to underground facilities?
- Does the state employ excavation damage investigation practices that are adequate to determine the responsible party or parties when excavation damage to underground facilities occurs?

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<sup>25</sup> Ch. 2017-102, L.O.F.

<sup>26</sup> Sunshine 811, *2018-19 Annual Report*, available at [https://static1.squarespace.com/static/533db0bde4b0d9f7ba7f1ee7/t/5dcf0cd17b2a3459bd9a81d6/1573850332734/2018-19\\_annualrpt.pdf](https://static1.squarespace.com/static/533db0bde4b0d9f7ba7f1ee7/t/5dcf0cd17b2a3459bd9a81d6/1573850332734/2018-19_annualrpt.pdf) (last visited Feb. 8, 2020).

<sup>27</sup> *Id.*

<sup>28</sup> 49 U.S.C. s. 60114.

<sup>29</sup> Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 80 Fed. Reg. 43,868 (July 23, 2015) (codified at 49 C.F.R. Parts 196 and 198).

- At a minimum, do the state’s excavation damage prevention requirements include the following:
  - Excavators may not engage in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area.
  - Excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.
  - An excavator who causes damage to a pipeline facility:
    - Must report the damage to the operator of the facility at the earliest practical moment following discovery of the damage; and
    - If the damage results in the escape of any PHMSA regulated natural and other gas or hazardous liquid, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.
- Does the state limit exemptions for excavators from its excavation damage prevention law?
  - A state must provide to PHMSA a written justification for any exemptions for excavators from state damage prevention requirements.
  - PHMSA will make the written justifications available to the public.<sup>30</sup>

PHMSA will enforce federal requirements and may take immediate enforcement against excavators in states where a state pipeline excavation damage prevention law enforcement program is not determined to be adequate by the criteria and procedures used by PHMSA.<sup>31</sup> States that fail to establish an adequate enforcement program within 5 years of the date of a finding of inadequacy may be subject to up to a 4 percent reduction in base state pipeline safety grant funding.<sup>32</sup>

### **Duties of State Fire Marshal**

Florida’s Chief Financial Officer is designated by law as the State Fire Marshal.<sup>33</sup> The State Fire Marshal is responsible for minimizing the loss of life and property in the state due to fire.<sup>34</sup> It is also charged with enforcing laws related to: the prevention of fire and explosion through the regulation of conditions which could lead to fire and explosion; installation and maintenance of fire alarm systems and 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.<sup>35</sup> The State Fire Marshal operates as a division of the Department of Financial Services. It operates through an Office of the Director and two bureaus: the Bureau of Fire Prevention and the Bureau of Firefighter Standards and Training.<sup>36</sup> The Bureau of Firefighter Standards and Training approves firefighter training curricula, offers fire service training at the Florida State Fire College, and certifies fire service members that meet standards. The Bureau of Fire Prevention conducts fire/life safety inspections and reviews construction plans for all state-owned buildings, regulates the fireworks and fire sprinkler industries, inspects and licenses boilers, and certifies

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Section 633.104(1), F.S.

<sup>34</sup> Section 633.104(2), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> Chief Financial Officer, *Division of State Fire Marshal*, <https://www.myfloridacfo.com/Division/SFM/> (last visited Feb. 8, 2020).

fire suppression industry workers. It has six field offices and three satellite offices around the state.<sup>37</sup>

Florida law provides investigatory authority for the State Fire Marshal. Upon request, the State Fire Marshall must investigate the cause, origin, and circumstances of fires and explosions where property has been damaged or destroyed and there is probable cause to believe that the fire or explosion was the result of carelessness or design. If the fire or explosion occurs in a municipality, county, or special district with an organized fire department, the local fire official must provide for an initial investigation before requesting an investigation by the State Fire Marshal. In an investigation, the State Fire Marshal may require testimony under oath from persons believed to be aware of any facts related to matters under investigation.<sup>38</sup>

If the State Fire Marshal believes that there is sufficient evidence to charge a person with an offense, he or she must cause the person to be arrested and must provide the appropriate prosecuting office with all pertinent information collected. The State Fire Marshal may compel the testimony of witnesses and the production of pertinent documents and may seize personal property to be held for evidence. The State Fire Marshal may designate an agent for the purpose of conducting an investigation, and the agent may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, receive evidence, and require the attendance and testimony of witnesses and the production of documents or other evidence material to the investigation. The State Fire Marshal must keep a record of all fires and explosions investigated under its authority.<sup>39</sup>

The State Fire Marshal is authorized to appoint such agents as may be necessary to effectively carry out the requirements of ch. 633, F.S.<sup>40</sup> Agents of the State Fire Marshal have the same authority to serve summonses, make arrests, carry firearms, and make searches and seizures, as the sheriff or her or his deputies in the respective counties.<sup>41</sup> Further, the chiefs of county, municipal, and special-district fire service providers; other fire service provider personnel designated by their respective chiefs; and personnel designated by local governments having no organized fire service providers may enforce ch. 633, F.S., and all State Fire Marshal rules.<sup>42</sup>

### III. Effect of Proposed Changes:

#### Expanded Enforcement Authority and Increased Penalties

##### *Permanent Markers*

**Section 1** of the bill amends s. 556.102, F.S., to define the terms “permanent marker” for purposes of the Underground Facility Damage Prevention and Safety Act. Permanent markers are clearly visible indications of the approximate location of underground facilities (examples include pipes and

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<sup>37</sup> *Id.*

<sup>38</sup> Section 633.112, F.S.

<sup>39</sup> *Id.*

<sup>40</sup> Section 633.114, F.S.

<sup>41</sup> Section 633.116, F.S.

<sup>42</sup> Section 633.118, F.S. However, personnel, other than county, city or special district fire chiefs, are agents of their respective jurisdictions, not agents of the State Fire Marshal.

cables). Permanent markers are made of durable material that is reasonably expected to remain in position for the life of the underground facility.

**Section 2** amends s. 556.107, F.S., to establish a criminal penalty for any person convicted of knowingly and willfully removing or damaging a “permanent marker” that has been placed to identify the approximate location of an underground facility. A violation is a second-degree misdemeanor, punishable by a term of imprisonment not exceeding 60 days and up to a \$500 fine.

### *Non-criminal Infractions*

**Section 2** of the bill amends s. 556.107, F.S., relating to noncriminal infractions for violations of certain provisions of the Act.

The bill makes violations of s. 556.105(5)(c), F.S., relating to excavation practices in tolerance zones, a noncriminal infraction.

The bill expands the list of entities that may issue citations for violations of s. 556.107, F.S. In addition to the existing authorized citation issuers, the bill authorizes the State Fire Marshal or its statutorily-defined agents under ss. 633.114<sup>43</sup> and 633.116, F.S.<sup>44</sup>, and the fire chief of the special district, municipality, or county in which an infraction happened to issue such citations.

The bill increases civil penalties from \$500 to up to \$2,500 (plus 5 percent, in addition to any other court costs) for certain violations of ch. 556, F.S., which involve an underground pipe or other underground facility transporting hazardous materials regulated by PHMSA. Specifically, the following violations are subject to this enhanced civil penalty:

- Failure by an excavator to comply with s. 556.105(1), F.S., which requires an excavator to provide notice and certain information to the Sunshine 811 system within specified timeframes prior to beginning excavation of demolition work.
- Failure by an excavator to comply with s. 556.105(5)(c), F.S., which requires an excavator to use increased caution when working within a tolerance zone,<sup>45</sup> such as hand digging, pot holing, soft digging, vacuum methods, or other similar procedures.
- Failure by an excavator to comply with s. 556.105(6), F.S., which requires an excavator to avoid excavation in an area until whichever of the following occurs first: each member operator’s underground facilities have been located and marked; the excavator has been notified that no member operator has underground facilities in the area; or the time allowed for markings has expired.
- Failure by an excavator to comply with s. 556.106(11), F.S., which requires an excavator to stop excavation and demolition activities in the vicinity of an underground facility and notify the Sunshine 811 system if the marking for the facility is removed, no longer visible, or inadequately documented.
- Failure by an excavator to comply with s. 556.105(12), F.S., which requires an excavator to immediately notify the appropriate member operator if the excavator causes contact with or

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<sup>43</sup> Authorizing the State Fire Marshal to appoint such agents as may be necessary to effectively carry out ch. 633, F.S.

<sup>44</sup> Granting agents of the State Fire Marshal the same authority to serve summonses, make arrests, carry firearms, and make searches and seizures, as the sheriff or her or his deputies in the respective counties.

<sup>45</sup> “Tolerance zone” means “24 inches from the outer edge of either side of the exterior surface of a marked underground facility.” Section 556.102(12), F.S.

damage to a pipe and to immediately call 911 to report contact or damage that causes the escape of any natural gas or other hazardous substance or material regulated by PHMSA.

If the clerk of court collects a civil penalty for one of these violations, the bill provides that 80 percent of the civil penalty will be distributed to the entity that issued the citation. The additional 20 percent, plus any additional court costs, is retained by the clerk. The bill provides that a person who willfully fails to properly respond to a citation issued for one of these violations will be charged with the offense of failing to respond to the citation and, if convicted, commits a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days and up to a \$500 fine.<sup>46</sup> The bill requires a written warning to this effect be provided at the time the citation is issued.<sup>47</sup>

In the event a person elects to have a hearing on the commission of an infraction, the bill provides that the applicable penalty may not exceed the applicable civil penalty for each infraction, and allows a person to appeal the amount of civil penalties imposed.

### *Payment of Civil Penalties*

Section 556.116(2)(c), F.S., authorizes the State Fire Marshal, or its agents, to issue citations and impose civil penalties<sup>48</sup> for violations of 556.107(1)(a), F.S., that were the proximate cause of an incident. The bill allows persons cited for infractions relating to high-priority subsurface installations under s. 556.116(2)(c), F.S., to post a bond equal to the sum of the penalty and court costs, and to pay the penalty plus court costs by mail or in person within 30 days of receiving the citation. Payment is considered an admission and waiver of the right to a hearing, and may be used as evidence in any proceeding under ch. 556, F.S.

### **Additional Reporting Requirements**

Under current law, each clerk of court, by March 31 of each year, must submit a report to Sunshine 811 listing each violation notice written under s. 556.107(1)(a), F.S., which has been filed in that county during the preceding calendar year. The report states the name and address of the member or excavator who committed each infraction and indicates whether or not the civil penalty for the infraction was paid. **Section 2** of the bill contains three new reporting requirements:

- A clerk of court must submit the report to the State Fire Marshal as well.
- The report must also list each citation issued for violations of s. 556.116(2)(c), F.S., relating to high-priority subsurface installations.
- The report must also indicate the enforcement authority, specific statutory infraction, and the type of underground facility related to the infraction.

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<sup>46</sup> Sections 775.082 and 775.083, F.S.

<sup>47</sup> Currently, if a person is found to have committed an infraction by a judge or hearing official, the person may appeal that finding to the circuit court. The bill also authorizes appeal to the circuit court of the amount of the civil penalties imposed.

<sup>48</sup> As noted, the penalty may not exceed \$50,000, unless the violator is a state agency or political subdivision, in which case the penalty may not exceed \$10,000. Section 556.116(2)(c), F.S.

### **Investigation of Incidents Involving High-Priority Subsurface Installations**

**Section 1** of the bill relocates the definitions of “high-priority subsurface installation” and “incident” from s. 556.116, F.S., which specifically governs high priority subsurface installations, to s. 556.102, F.S., which provides definitions for ch. 556, F.S., governing underground facility damage prevention and safety, as a whole.

**Section 3** of the bill amends s. 556.116, F.S., relating to high-priority subsurface installations.

For incidents involving high-priority subsurface installations, the bill requires member operators or excavators to report the incident to the Sunshine 811 system *and* the State Fire Marshal within 24 hours after learning of the incident. Then, the State Fire Marshal, or a statutorily defined agent under ss. 633.114,<sup>49</sup> 633.116,<sup>50</sup> and 633.118 F.S.,<sup>51</sup> if authorized by the State Fire Marshal, is required to conduct an investigation of the incident to determine whether the incident occurred, and whether a violation of s. 556.107(a), F.S., was the proximate cause of the incident. The State Fire Marshal or its agents may issue citations and impose civil penalties associated with such incidents, in addition to any other civil penalty related to the incident.

Five percent of any additional civil penalty must be retained by the clerk to cover administrative costs, and the remainder must be distributed equally between the Sunshine 811 system and the State Fire Marshal. The portion distributed to the 811 system must be used exclusively to fund damage-prevention education. The State Fire Marshal portion must be used exclusively to fund programs within the State Fire Marshal’s office that provide need-based financial assistance to help fire departments, including volunteer fire departments, procure equipment, supplies, and educational training designed to mitigate firefighter exposure to cancer-causing chemicals.

These provisions replace the requirement in current law that DOAH conduct investigations of incidents involving high-priority subsurface installations. The bill removes all provisions of current law that establish the procedural requirements for DOAH review of such incidents.

The bill requires that excavators or member operators who commit non-criminal infractions regarding the transmission of an incident report to the State Fire Marshal be provided a written warning at the time the citation is issued stating that willful failure to respond to the citation may result in criminal penalties; conviction results in a misdemeanor of the second degree.

### **Underground Facility Damage Prevention Review**

**Section 4** of the bill creates s. 556.117, F.S., which requires Sunshine State One-Call of Florida, Inc., to review the reports submitted by the clerks of court to the State Fire Marshal, and any complaints of

<sup>49</sup> *Supra* note 43.

<sup>50</sup> *Supra* note 44.

<sup>51</sup> Authorizing the chiefs of county, municipal, and special-district fire service providers; other fire service provider personnel designated by their respective chiefs; and personnel designated by local governments having no organized fire service providers to enforce ch. 633, F.S., and all State Fire Marshal rules. However, such personnel are agents of their respective jurisdictions, not agents of the State Fire Marshal. Thus, the reference to State Fire Marshal “agents as provided in 633.114 and 633.116 [and] the fire chief of the special district, municipality, or county” in section 1 of the bill appears to have the same meaning as the references to State Fire Marshal “agents as provided in ss. 633.114, 633.116, and 633.118” in section 3.

alleged violations of ch. 556, F.S., in order to identify issues and potential issues with damage prevention and enforcement. Sunshine State One-Call of Florida, Inc., is further required to identify areas of the state needing additional education related to damage prevention and enforcement, and to recommend solutions to remedy issues found. Each year, by the first of October, Sunshine State One-Call of Florida, Inc. must submit an analysis of its reviews and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

#### **Effective Date**

**Section 5** provides the bill takes effect July 1, 2020.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may encourage increased enforcement of ch. 556, F.S. Increased enforcement will result in additional fines imposed on persons who violate certain provisions of ch. 556, F.S. As a result, increased enforcement may deter behaviors that cause damages to property, utility service outages, and serious bodily injury.

C. Government Sector Impact:

The bill may have an indeterminate positive impact on local government revenues, as it authorizes fire chiefs to issue citations for the specified violations. The bill also increases

the maximum fine that may be imposed as a civil penalty for violations related to an underground pipe or other underground facility transporting hazardous materials regulated by PHMSA. The extent of any increase in revenues, however, is indeterminate, as the result will depend on compliance with ch. 556, F.S., and the enforcement efforts of fire chiefs.

The bill may require the expenditure of resources by the State Fire Marshal to investigate alleged high-priority subsurface installation incidents. Again, however, the extent of any increase is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 556.102, 556.107, and 556.116.

This bill creates section 556.117 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS/CS by Rules on February 26, 2020:**

The committee substitute revises the distribution and authorized uses of civil penalties collected for violations involving high-priority subsurface installations and makes technical and conforming changes.

**CS/CS by Banking and Insurance on February 11, 2020:**

The committee substitute:

- Relocates definitions;
- Makes violations relating to excavation practices in tolerance zones a noncriminal infraction;
- Gives the State Fire Marshal sole investigative authority over alleged incidents involving high-priority subsurface installations, and to issue citations and impose civil penalties for violations found to be the proximate cause of such an incident. Allows the State Fire Marshal to delegate its duties to statutorily defined agents;
- Allows persons cited for infractions related to high-priority subsurface installations to post a bond equal to the sum of the civil penalties and court costs, and to pay the penalties and court costs by mail or in person. Provides that payment is considered an admission and waiver of the right to a hearing, and may be used as evidence in any proceeding under ch. 556, F.S.

- Alters the distribution of civil penalty monies;
- Removes the requirements regarding the underground facility damage prevention review panel and its membership, and, in its place, charges Sunshine State One-Call of Florida, Inc. with reviewing clerk reports of violations and complaints of alleged violations, and identifying issues and potential issues with damage prevention and enforcement.
- Sunshine State One-Call of Florida, Inc., unlike the panel, is required to submit an analysis of these reviews, by October 1 of each year, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

**CS by Infrastructure and Security on January 27, 2020:**

The committee substitute:

- Clarifies that special district, municipal, and county fire chiefs may issue citations for existing and enhanced-penalty violations of the Damage Prevention Act and that failure to respond to a citation must be willful; and adds a civil penalty for knowingly and willfully removing or damaging a permanent marker.
- Replaces Sunshine One-Call with the State Fire Marshal as the entity appointing members to the panel created to review complaints of alleged violations, identify issues, and recommend needed legislation; and adds a member representing the cable industry as a potential panel member. Provides panel members serve without compensation and are not entitled to per diem or travel expenses.
- Under the bill, the State Fire Marshal will be appointing the members of the Underground Facility Damage Prevention Review Panel and creating a process for accepting applications for membership on the Review Panel.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2020	.	
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The Committee on Rules (Flores) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present subsections (8) and (9) through (14) of  
section 556.102, Florida Statutes, are redesignated as  
subsections (10) and (12) through (17), respectively, and new  
subsections (8), (9), and (11) are added to that section, to  
read:

556.102 Definitions.—As used in this act:

(8) "High-priority subsurface installation" means an



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12 underground gas transmission or gas distribution pipeline, or an  
13 underground pipeline used to transport gasoline, jet fuel, or  
14 any other refined petroleum product or hazardous or highly  
15 volatile liquid, such as anhydrous ammonia or carbon dioxide, if  
16 the pipeline is deemed to be critical by the operator of the  
17 pipeline and is identified as a high-priority subsurface  
18 installation to an excavator who has provided a notice of intent  
19 to excavate under s. 556.105(1), or would have been identified  
20 as a high-priority subsurface installation except for the  
21 excavator's failure to give proper notice of intent to excavate.

22 (9) "Incident" means an event that involves damage to a  
23 high-priority subsurface installation that has been identified  
24 as such by the operator according to the notification procedures  
25 set forth in s. 556.116(1) and that:

26 (a) Results in death or serious bodily injury requiring  
27 inpatient hospitalization.

28 (b) Results in property damage, including service-  
29 restoration costs, in an amount in excess of \$50,000 or an  
30 interruption of service to 2,500 or more customers.

31 (11) "Permanent marker" means a clearly visible indication  
32 of the approximate location of an underground facility which is  
33 made of material that is durable in nature and which is  
34 reasonably expected to remain in position for the life of the  
35 underground facility.

36 Section 2. Section 556.107, Florida Statutes, is amended to  
37 read:

38 556.107 Violations.—

39 (1) NONCRIMINAL INFRACTIONS.—

40 (a) 1. Violations of the following provisions are



41 noncriminal infractions:

42 ~~a.1.~~ Section 556.105(1), relating to providing required  
43 information.

44 ~~b.~~ Section 556.105(5)(c), relating to excavation practices  
45 in tolerance zones.

46 ~~c.2.~~ Section 556.105(6), relating to the avoidance of  
47 excavation.

48 ~~d.3.~~ Section 556.105(11), relating to the need to stop  
49 excavation or demolition because marks are no longer visible,  
50 or, in the case of underwater facilities, are inadequately  
51 documented.

52 ~~e.4.~~ Section 556.105(12), relating to the need to cease  
53 excavation or demolition activities because of contact or damage  
54 to an underground facility.

55 ~~f.5.~~ Section 556.105(5)(a) and (b), relating to  
56 identification of underground facilities, if a member operator  
57 does not mark an underground facility, but not if a member  
58 operator marks an underground facility incorrectly.

59 ~~g.6.~~ Section 556.109(2), relating to falsely notifying the  
60 system of an emergency situation or condition.

61 ~~h.7.~~ Section 556.114(1), (2), (3), and (4), relating to a  
62 failure to follow low-impact marking practices, as defined  
63 therein.

64 2. Violations of the following provisions involving an  
65 underground facility transporting hazardous materials that are  
66 regulated by the Pipeline and Hazardous Materials Safety  
67 Administration of the United States Department of Transportation  
68 are noncriminal infractions, subject to enhanced civil penalties  
69 under paragraph (c):



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70 a. Section 556.105(1), relating to providing required  
71 information.

72 b. Section 556.105(5)(c), relating to excavation practices  
73 in tolerance zones.

74 c. Section 556.105(6), relating to the avoidance of certain  
75 excavation.

76 d. Section 556.105(11), relating to the need to stop  
77 excavation or demolition because certain marks are removed, no  
78 longer visible, or inadequately documented.

79 e. Section 556.105(12), relating to the need to cease  
80 excavation or demolition activities because of contact or damage  
81 to an underground facility.

82 (b) Any excavator or member operator who commits a  
83 noncriminal infraction under paragraph (a) may be issued a  
84 citation by the State Fire Marshal or his or her agents as  
85 provided in ss. 633.114 and 633.116; the fire chief of the  
86 special district, municipality, or county; or any local or state  
87 law enforcement officer, government code inspector, or code  
88 enforcement officer, and the issuer of a citation may require an  
89 excavator to cease work on any excavation or not start a  
90 proposed excavation until there has been compliance with the  
91 provisions of this chapter. Citations shall be hand delivered to  
92 any employee of the excavator or member operator who is involved  
93 in the noncriminal infraction. The citation shall be issued in  
94 the name of the excavator or member operator, whichever is  
95 applicable.

96 (c) 1. Any excavator or member operator who commits a  
97 noncriminal infraction under subparagraph (a)1. paragraph (a)-  
98 may be required to pay a civil penalty of \$500 plus court costs



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99 for each infraction, ~~which is \$500 plus court costs.~~ If a  
100 citation is issued ~~by a state law enforcement officer, a local~~  
101 ~~law enforcement officer, a local government code inspector, or a~~  
102 ~~code enforcement officer,~~ 80 percent of the civil penalty  
103 collected by the clerk of the court must ~~shall~~ be distributed to  
104 the governmental entity whose employee issued the citation and  
105 20 percent of the penalty must ~~shall~~ be retained by the clerk ~~to~~  
106 ~~cover administrative costs,~~ in addition to any other court  
107 costs. ~~Any person who fails to properly respond to a citation~~  
108 ~~issued pursuant to paragraph (b) shall, in addition to the~~  
109 ~~citation, be charged with the offense of failing to respond to~~  
110 ~~the citation and, upon conviction, commits a misdemeanor of the~~  
111 ~~second degree, punishable as provided in s. 775.082 or s.~~  
112 ~~775.083. A written warning to this effect must be provided at~~  
113 ~~the time any citation is issued pursuant to paragraph (b).~~

114 2. Any excavator or member operator who commits a  
115 noncriminal infraction under subparagraph (a)2. may be required  
116 to pay an enhanced civil penalty of \$2,500 plus court costs for  
117 each infraction. If a citation is issued, 80 percent of the  
118 civil penalty collected by the clerk of the court must be  
119 distributed to the governmental entity whose employee issued the  
120 citation and 20 percent must be retained by the clerk in  
121 addition to any court costs.

122 3. Any person who willfully fails to properly respond to a  
123 citation issued under paragraph (b) shall, in addition to the  
124 citation, be charged with the offense of failing to respond to  
125 the citation and, upon conviction, commits a misdemeanor of the  
126 second degree, punishable as provided in s. 775.082 or s.  
127 775.083. A written warning to this effect must be provided at



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128 the time a citation is issued under paragraph (b).

129 (d) Any person cited for an infraction under paragraph (a)  
130 or s. 556.116(2) (c) may post a bond, which must ~~shall~~ be equal  
131 in amount to the applicable civil penalty plus any additional  
132 court costs.

133 (e) A person charged with a noncriminal infraction under  
134 paragraph (a) or s. 556.116(2) (c) may pay the applicable civil  
135 penalty plus the additional court costs, by mail or in person,  
136 within 30 days after the date of receiving the citation. If the  
137 person cited pays the civil penalty, she or he is deemed to have  
138 admitted to committing the infraction and to have waived the  
139 right to a hearing on the issue of commission of the infraction.  
140 The admission may be used as evidence in any other proceeding  
141 under this chapter.

142 (f) Any person may elect to have a hearing on the  
143 commission of the infraction ~~appear~~ before the county court. A  
144 person who elects to have a hearing waives ~~and if so electing is~~  
145 ~~deemed to have waived~~ the limitations on the civil penalties  
146 ~~penalty~~ specified in paragraph (c). The court, after a hearing,  
147 shall make a determination as to whether an infraction has been  
148 committed. If the commission of an infraction has been proven,  
149 the court may impose a ~~civil~~ penalty not to exceed the  
150 applicable civil penalty ~~\$5,000~~ plus court costs for each  
151 infraction. In determining the amount of the civil penalty, the  
152 court may consider previous noncriminal infractions committed.

153 (g) At a court hearing under this chapter, the commission  
154 of a charged infraction must be proven by a preponderance of the  
155 evidence.

156 (h) If the court finds that a person ~~is found by a judge or~~



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157 ~~hearing official to have~~ committed an infraction, the person may  
158 appeal that finding or the amount of the civil penalties imposed  
159 to the circuit court.

160 (i) Sunshine State One-Call of Florida, Inc., may, at its  
161 own cost, retain an attorney to assist in the presentation of  
162 relevant facts and law in the county court proceeding pertaining  
163 to the citation issued under this section. The corporation may  
164 also appear in any case appealed to the circuit court if a  
165 county court judge finds that an infraction of the chapter was  
166 committed. An appellant in the ~~circuit~~ court proceeding shall  
167 timely notify the corporation of any appeal under this section.

168 (2) REPORT OF INFRACTIONS.—By March 31 of each year, each  
169 clerk of court shall submit a report to the State Fire Marshal  
170 and Sunshine State One-Call of Florida, Inc., listing each  
171 citation issued for a violation ~~notice written~~ under paragraph  
172 (1) (a) and s. 556.116(2) (c) which has been filed in that county  
173 during the preceding calendar year. The report must state the  
174 name and address of the member or excavator who committed each  
175 infraction, the enforcement authority, the specific statutory  
176 infraction, and the type of underground facility related to the  
177 infraction and must indicate whether or not the civil penalty  
178 for the infraction was paid.

179 (3) MISDEMEANORS.—

180 (a) Any person who knowingly and willfully removes or  
181 otherwise destroys the valid stakes or other valid physical  
182 markings described in s. 556.105(5) (a) and (b) used to mark the  
183 horizontal route of an underground facility commits a  
184 misdemeanor of the second degree, punishable as provided in s.  
185 775.082 or s. 775.083. For purposes of this subsection, stakes



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186 or other nonpermanent physical markings are considered valid for  
187 30 calendar days after information is provided to the system  
188 under s. 556.105(1) (a).

189 (b) Any person who knowingly and willfully removes or  
190 damages a permanent marker placed to identify the approximate  
191 location of an underground facility commits a misdemeanor of the  
192 second degree, punishable as provided in s. 775.082 or s.  
193 775.083.

194 Section 3. Section 556.116, Florida Statutes, is amended to  
195 read:

196 556.116 High-priority subsurface installations; special  
197 procedures.-

198 ~~(1) As used in this section, the term:~~

199 ~~(a) "Division" means the Division of Administrative~~  
200 ~~Hearings.~~

201 ~~(b) "High-priority subsurface installation" means an~~  
202 ~~underground gas transmission or gas distribution pipeline, an~~  
203 ~~underground pipeline used to transport gasoline, jet fuel, or~~  
204 ~~any other refined petroleum product or hazardous or highly~~  
205 ~~volatile liquid, such as anhydrous ammonia or carbon dioxide, if~~  
206 ~~the pipeline is deemed to be critical by the operator of the~~  
207 ~~pipeline and is identified as a high-priority subsurface~~  
208 ~~installation to an excavator who has provided a notice of intent~~  
209 ~~to excavate pursuant to s. 556.105(1), or would have been~~  
210 ~~identified as a high-priority subsurface installation except for~~  
211 ~~the excavator's failure to give proper notice of intent to~~  
212 ~~excavate.~~

213 ~~(c) "Incident" means an event that involves damage to a~~  
214 ~~high-priority subsurface installation that has been identified~~



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215 ~~as such by the operator according to the notification procedures~~  
216 ~~set forth in subsection (2) and that:~~

217 ~~1. Results in death or serious bodily injury requiring~~  
218 ~~inpatient hospitalization.~~

219 ~~2. Results in property damage, including service-~~  
220 ~~restoration costs, in an amount in excess of \$50,000 or~~  
221 ~~interruption of service to 2,500 or more customers.~~

222 ~~(1)-(2)~~ When an excavator proposes to excavate or demolish  
223 within 15 feet of the horizontal route of an underground  
224 facility that has been identified as a high-priority subsurface  
225 installation by the operator of the facility, the operator  
226 shall, in addition to identifying the horizontal route of its  
227 facility as set forth in s. 556.105(5) (a) and (b), and within  
228 the time period set forth in s. 556.105(9) (a) for a positive  
229 response, notify the excavator that the facility is a high-  
230 priority subsurface installation. If the member operator  
231 provides such timely notice of the existence of a high-priority  
232 subsurface installation, an excavator shall notify the operator  
233 of the planned excavation start date and time before beginning  
234 excavation. If the member operator does not provide timely  
235 notice, the excavator may proceed, after waiting the prescribed  
236 time period set forth in s. 556.105(9) (a), to excavate without  
237 notifying the member operator of the excavation start date and  
238 time. The exemptions stated in s. 556.108 apply to the  
239 notification requirements in this subsection.

240 ~~(2) (a)-(3) (a)~~ An alleged commission of an infraction listed  
241 in s. 556.107(1) which results in an incident must be reported  
242 to the system and the State Fire Marshal by a member operator or  
243 an excavator within 24 hours after learning of the alleged



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244 occurrence of an incident.

245 (b) Upon receipt of an allegation that an incident has  
246 occurred, the member operator or excavator system shall transmit  
247 an incident report to the State Fire Marshal, who shall ~~division~~  
248 ~~and contract with the division so that the division may~~ conduct  
249 an investigation ~~a hearing~~ to determine whether an incident has  
250 occurred, and, if so, whether a violation of s. 556.107(1)(a)  
251 was a proximate cause of the incident. The State Fire Marshal  
252 may authorize his or her agents as provided in ss. 633.114,  
253 633.116, and 633.118 to conduct investigations of incidents ~~The~~  
254 ~~contract for services to be performed by the division must~~  
255 ~~include provisions for the system to reimburse the division for~~  
256 ~~any costs incurred by the division for court reporters,~~  
257 ~~transcript preparation, travel, facility rental, and other~~  
258 ~~customary hearing costs, in the manner set forth in s.~~  
259 ~~120.65(9).~~

260 (c) The State Fire Marshal or his or her agents as provided  
261 in ss. 633.114, 633.116, and 633.118 ~~division has jurisdiction~~  
262 ~~in a proceeding under this section to determine the facts and~~  
263 ~~law concerning an alleged incident. The division may~~ issue a  
264 citation and impose a civil penalty ~~fine~~ against a violator in  
265 an amount not to exceed \$50,000 if the person violated a  
266 provision of s. 556.107(1)(a) and that violation was a proximate  
267 cause of the incident. However, if a state agency or political  
268 subdivision caused the incident, the state agency or political  
269 subdivision may not be fined in an amount in excess of \$10,000.

270 (d) The civil penalty ~~A fine~~ imposed under this subsection  
271 ~~by the division~~ is in addition to any amount payable as a result  
272 of a citation relating to the incident under s. 556.107(1)(a).



273           (e) If an additional civil penalty is imposed by the State  
274 Fire Marshal or his or her agents, 5 percent of the civil  
275 penalty must be retained by the clerk to cover administrative  
276 costs, and the remainder of the civil penalty must be  
277 distributed equally between the system and the State Fire  
278 Marshal. The portion of the civil penalty distributed to the  
279 system must be used exclusively to fund damage-prevention  
280 education. The portion of the civil penalty distributed to the  
281 State Fire Marshal must be used exclusively to fund programs  
282 created within the State Fire Marshal's office that provide  
283 need-based financial assistance to help fire departments,  
284 including volunteer fire departments, procure equipment,  
285 supplies, and educational training designed to mitigate  
286 firefighter exposure to hazardous, cancer-causing chemicals A  
287 ~~fine against an excavator or a member operator imposed under~~  
288 ~~this subsection shall be paid to the system, which shall use the~~  
289 ~~collected fines to satisfy the costs incurred by the system for~~  
290 ~~any proceedings under this section. To the extent there are any~~  
291 ~~funds remaining, the system may use the funds exclusively for~~  
292 ~~damage-prevention education.~~

293           (f) Any excavator or member operator who commits a  
294 noncriminal infraction under s. 556.116(2)(c) must be provided a  
295 written warning at the time a citation is issued stating that  
296 any person who willfully fails to properly respond to a citation  
297 will be charged, in addition to the citation, with the offense  
298 of failing to respond to the citation and, if convicted, commits  
299 a misdemeanor of the second degree, punishable as provided in s.  
300 775.082 or s. 775.083.

301           (g) This section does not change the basis for civil



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302 liability. The findings and results of an investigation a  
303 ~~hearing~~ under this section may not be used as evidence of  
304 liability in any civil action.

305 ~~(4)(a) The division shall issue and serve on all original~~  
306 ~~parties an initial order that assigns the case to a specific~~  
307 ~~administrative law judge and requests information regarding~~  
308 ~~scheduling the final hearing within 5 business days after the~~  
309 ~~division receives a petition or request for hearing. The~~  
310 ~~original parties in the proceeding include all excavators and~~  
311 ~~member operators identified by the system as being involved in~~  
312 ~~the alleged incident. The final hearing must be conducted within~~  
313 ~~60 days after the date the petition or the request for a hearing~~  
314 ~~is filed with the division.~~

315 ~~(b) Unless the parties otherwise agree, venue for the~~  
316 ~~hearing shall be in the county in which the underground facility~~  
317 ~~is located.~~

318 ~~(c) An intervenor in the proceeding must file a petition to~~  
319 ~~intervene no later than 15 days before the final hearing. A~~  
320 ~~person who has a substantial interest in the proceeding may~~  
321 ~~intervene.~~

322 ~~(5) The following procedures apply:~~

323 ~~(a) Motions shall be limited to the following:~~

324 ~~1. A motion in opposition to the petition.~~

325 ~~2. A motion requesting discovery beyond the informal~~  
326 ~~exchange of documents and witness lists described in paragraph~~  
327 ~~(c). Upon a showing of necessity, additional discovery may be~~  
328 ~~permitted in the discretion of the administrative law judge, but~~  
329 ~~only if the discovery can be completed no later than 5 days~~  
330 ~~before the final hearing.~~



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331           ~~3. A motion for continuance of the final hearing date.~~  
332           ~~(b) All parties shall attend a prehearing conference for~~  
333 ~~the purpose of identifying the legal and factual issues to be~~  
334 ~~considered at the final hearing, the names and addresses of~~  
335 ~~witnesses who may be called to testify at the final hearing,~~  
336 ~~documentary evidence that will be offered at the final hearing,~~  
337 ~~the range of penalties that may be imposed, and any other matter~~  
338 ~~that would expedite resolution of the proceeding. The prehearing~~  
339 ~~conference may be held by telephone conference call.~~  
340           ~~(c) Not later than 5 days before the final hearing, the~~  
341 ~~parties shall furnish to each other copies of documentary~~  
342 ~~evidence and lists of witnesses who may testify at the final~~  
343 ~~hearing.~~  
344           ~~(d) All parties shall have an opportunity to respond, to~~  
345 ~~present evidence and argument on all issues involved, to conduct~~  
346 ~~cross-examination and submit rebuttal evidence, and to be~~  
347 ~~represented by counsel or other qualified representative.~~  
348           ~~(e) The record shall consist only of:~~  
349           ~~1. All notices, pleadings, motions, and intermediate~~  
350 ~~rulings.~~  
351           ~~2. Evidence received during the final hearing.~~  
352           ~~3. A statement of matters officially recognized.~~  
353           ~~4. Proffers of proof and objections and rulings thereon.~~  
354           ~~5. Matters placed on the record after an ex parte~~  
355 ~~communication.~~  
356           ~~6. The written final order of the administrative law judge~~  
357 ~~presiding at the final hearing.~~  
358           ~~7. The official transcript of the final hearing.~~  
359           ~~(f) The division shall accurately and completely preserve~~



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360 ~~all testimony in the proceeding and, upon request by any party,~~  
361 ~~shall make a full or partial transcript available at no more~~  
362 ~~than actual cost.~~

363 ~~(g) The administrative law judge shall issue a final order~~  
364 ~~within 30 days after the final hearing or the filing of the~~  
365 ~~transcript thereof, whichever is later. The final order of the~~  
366 ~~administrative law judge must include:~~

367 ~~1. Findings of fact based exclusively on the evidence of~~  
368 ~~record and matters officially recognized.~~

369 ~~2. Conclusions of law. In determining whether a party has~~  
370 ~~committed an infraction of s. 556.107(1) (a), and whether the~~  
371 ~~infraction was a proximate cause of an incident, the commission~~  
372 ~~of an infraction must be proven by a preponderance of the~~  
373 ~~evidence.~~

374 ~~3. Imposition of a fine, if applicable.~~

375 ~~4. Any other information required by law or rule to be~~  
376 ~~contained in a final order.~~

377  
378 ~~The final order of the administrative law judge constitutes~~  
379 ~~final agency action subject to judicial review pursuant to s.~~  
380 ~~120.68.~~

381 ~~Section 4. Section 556.117, Florida Statutes, is created to~~  
382 ~~read:~~

383 ~~556.117 Underground facility damage prevention review.—~~  
384 ~~Sunshine State One-Call of Florida, Inc., shall review the~~  
385 ~~reports submitted by the clerks of court to the State Fire~~  
386 ~~Marshal and any complaints of an alleged violation under this~~  
387 ~~chapter to identify issues or potential issues with damage~~  
388 ~~prevention and enforcement. The corporation shall identify areas~~



389 in the state where additional education related to damage  
390 prevention and enforcement is needed and shall recommend  
391 solutions to remedy issues related to damage prevention and  
392 enforcement. The corporation shall, by October 1 of each year,  
393 submit to the Governor, the President of the Senate, and the  
394 Speaker of the House of Representatives an analysis of its  
395 reviews and any recommendations for improving underground  
396 facility damage prevention and enforcement.

397 Section 5. This act shall take effect July 1, 2020.  
398

399 ===== T I T L E A M E N D M E N T =====

400 And the title is amended as follows:

401 Delete everything before the enacting clause  
402 and insert:

403 A bill to be entitled  
404 An act relating to underground facility damage  
405 prevention and safety; amending s. 556.102, F.S.;  
406 providing definitions; amending s. 556.107, F.S.;  
407 revising and providing noncriminal violations relating  
408 to the transportation of certain hazardous materials;  
409 authorizing the State Fire Marshal or his or her  
410 agents or the fire chief of the special district,  
411 municipality, or county to issue certain citations;  
412 providing enhanced civil penalties; providing  
413 disposition of the civil penalties; requiring a report  
414 to be submitted to an additional entity; providing  
415 requirements for the report; providing civil and  
416 criminal penalties; amending s. 556.116, F.S.;  
417 deleting definitions; requiring certain persons to



418 transmit an incident report to the State Fire Marshal;  
419 providing that certain incident reports must be  
420 investigated by the State Fire Marshal or his or her  
421 agents; authorizing the State Fire Marshal or his or  
422 her agents to issue citations and impose civil  
423 penalties; providing for disposition of the civil  
424 penalty; requiring written warnings for certain  
425 noncriminal infractions; providing for an enhanced  
426 penalty upon conviction for a failure to respond;  
427 deleting provisions relating to hearings by the  
428 Division of Administrative Hearings of certain  
429 incidents; creating s. 556.117, F.S.; requiring  
430 Sunshine State One-Call of Florida, Inc., to review  
431 certain reports and complaints; requiring the  
432 corporation to identify areas in the state in need of  
433 additional education and to recommend solutions;  
434 requiring the corporation to submit an annual report  
435 to the Governor and the Legislature by a specified  
436 date; providing an effective date.

By the Committees on Banking and Insurance; and Infrastructure and Security; and Senator Flores

597-03515-20

20201464c2

1 A bill to be entitled  
 2 An act relating to underground facility damage  
 3 prevention and safety; amending s. 556.102, F.S.;  
 4 defining the term "permanent marker" and consolidating  
 5 other definitions from throughout the chapter;  
 6 amending s. 556.107, F.S.; revising noncriminal  
 7 violations and providing noncriminal violations  
 8 relating to the transportation of certain hazardous  
 9 materials; authorizing the State Fire Marshal or his  
 10 or her agents to issue certain citations; providing  
 11 enhanced civil penalties; providing disposition of the  
 12 civil penalty; requiring a report by additional  
 13 entities; providing civil penalties relating to  
 14 removing or damaging a permanent marker; amending s.  
 15 556.116, F.S.; moving and consolidating definitions to  
 16 the definition section for the chapter; providing that  
 17 certain incident reports must be submitted to, and  
 18 investigated by, the State Fire Marshal or his or her  
 19 agents; authorizing the State Fire Marshal or his or  
 20 her agents to issue citations and civil penalties;  
 21 providing for disposition of the civil penalty;  
 22 requiring written warnings for certain noncriminal  
 23 infractions; providing for an enhanced penalty upon  
 24 conviction for a failure to respond; removing  
 25 provisions relating to hearings by the Division of  
 26 Administrative Hearings of certain incidents; creating  
 27 s. 556.117, F.S.; requiring Sunshine State One-Call of  
 28 Florida, Inc., to review certain reports and  
 29 complaints; requiring the corporation to identify

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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30 areas for additional education and recommend  
 31 solutions; requiring an annual report to the Governor  
 32 and the Legislature; providing an effective date.  
 33  
 34 Be It Enacted by the Legislature of the State of Florida:  
 35  
 36 Section 1. Present subsections (8) and (9) through (14) of  
 37 section 556.102, Florida Statutes, are redesignated as  
 38 subsections (10) and (12) through (17), respectively, and new  
 39 subsections (8), (9), and (11) are added to that section, to  
 40 read:  
 41 556.102 Definitions.—As used in this act:  
 42 (8) "High-priority subsurface installation" means an  
 43 underground gas transmission or gas distribution pipeline, or an  
 44 underground pipeline used to transport gasoline, jet fuel, or  
 45 any other refined petroleum product or hazardous or highly  
 46 volatile liquid, such as anhydrous ammonia or carbon dioxide, if  
 47 the pipeline is deemed to be critical by the operator of the  
 48 pipeline and is identified as a high-priority subsurface  
 49 installation to an excavator who has provided a notice of intent  
 50 to excavate under to s. 556.105(1), or would have been  
 51 identified as a high-priority subsurface installation except for  
 52 the excavator's failure to give proper notice of intent to  
 53 excavate.  
 54 (9) "Incident" means an event that involves damage to a  
 55 high-priority subsurface installation that has been identified  
 56 as such by the operator according to the notification procedures  
 57 set forth in s. 556.116(1) and that:  
 58 1. Results in death or serious bodily injury requiring

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59 inpatient hospitalization.

60 2. Results in property damage, including service-  
61 restoration costs, in an amount in excess of \$50,000 or  
62 interruption of service to 2,500 or more customers.

63 (11) "Permanent marker" means a clearly visible indication  
64 of the approximate location of an underground facility which is  
65 made of material that is durable in nature and which is  
66 reasonably expected to remain in position for the life of the  
67 underground facility.

68 Section 2. Section 556.107, Florida Statutes, is amended to  
69 read:

70 556.107 Violations.—

71 (1) NONCRIMINAL INFRACTIONS.—

72 (a) 1. Violations of the following provisions are  
73 noncriminal infractions:

74 a.1- Section 556.105(1), relating to providing required  
75 information.

76 b. Section 556.105(5)(c), relating to excavation practices  
77 in tolerance zones.

78 c.2- Section 556.105(6), relating to the avoidance of  
79 excavation.

80 d.3- Section 556.105(11), relating to the need to stop  
81 excavation or demolition because marks are no longer visible,  
82 or, in the case of underwater facilities, are inadequately  
83 documented.

84 e.4- Section 556.105(12), relating to the need to cease  
85 excavation or demolition activities because of contact or damage  
86 to an underground facility.

87 f.5- Section 556.105(5)(a) and (b), relating to

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88 identification of underground facilities, if a member operator  
89 does not mark an underground facility, but not if a member  
90 operator marks an underground facility incorrectly.

91 g.6- Section 556.109(2), relating to falsely notifying the  
92 system of an emergency situation or condition.

93 h.7- Section 556.114(1), (2), (3), and (4), relating to a  
94 failure to follow low-impact marking practices, as defined  
95 therein.

96 2. Violations of the following provisions involving an  
97 underground facility transporting hazardous materials that are  
98 regulated by the Pipeline and Hazardous Materials Safety  
99 Administration of the United States Department of Transportation  
100 are noncriminal infractions, subject to enhanced civil penalties  
101 under paragraph (c):

102 a. Section 556.105(1), relating to providing required  
103 information.

104 b. Section 556.105(5)(c), relating to excavation practices  
105 in tolerance zones.

106 c. Section 556.105(6), relating to the avoidance of certain  
107 excavation.

108 d. Section 556.105(11), relating to the need to stop  
109 excavation or demolition because certain marks are no longer  
110 visible or are inadequately documented.

111 e. Section 556.105(12), relating to the need to cease  
112 excavation or demolition activities because of contact or damage  
113 to an underground facility.

114 (b) Any excavator or member operator who commits a  
115 noncriminal infraction under paragraph (a) may be issued a  
116 citation by the State Fire Marshal or agents as provided in ss.

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117 633.114 and 633.116; the fire chief of the special district,  
 118 municipality, or county; or any local or state law enforcement  
 119 officer, government code inspector, or code enforcement officer,  
 120 and the issuer of a citation may require an excavator to cease  
 121 work on any excavation or not start a proposed excavation until  
 122 there has been compliance with the provisions of this chapter.  
 123 Citations shall be hand delivered to any employee of the  
 124 excavator or member operator who is involved in the noncriminal  
 125 infraction. The citation shall be issued in the name of the  
 126 excavator or member operator, whichever is applicable.

127 (c) 1. Any excavator or member operator who commits a  
 128 noncriminal infraction under subparagraph (a)1. paragraph (a)  
 129 may be required to pay a civil penalty of \$500 plus court costs  
 130 for each infraction, which is \$500 plus court costs. If a  
 131 citation is issued by a state law enforcement officer, a local  
 132 law enforcement officer, a local government code inspector, or a  
 133 code enforcement officer, 80 percent of the civil penalty  
 134 collected by the clerk of the court must shall be distributed to  
 135 the governmental entity whose employee issued the citation and  
 136 20 percent of the penalty must shall be retained by the clerk to  
 137 cover administrative costs, in addition to any other court  
 138 costs. Any person who fails to properly respond to a citation  
 139 issued under pursuant to paragraph (b) shall, in addition to the  
 140 citation, be charged with the offense of failing to respond to  
 141 the citation and, upon conviction, commits a misdemeanor of the  
 142 second degree, punishable as provided in s. 775.082 or s.  
 143 775.083. A written warning to this effect must be provided at  
 144 the time any citation is issued under pursuant to paragraph (b).

145 2. Any excavator or member operator who commits a

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146 noncriminal infraction under subparagraph (a)2. may be required  
 147 to pay an enhanced civil penalty of \$2,500 plus court costs for  
 148 each infraction. If a citation is issued, 80 percent of the  
 149 civil penalty collected by the clerk of the court must be  
 150 distributed to the governmental entity whose employee issued the  
 151 citation and 20 percent must be retained by the clerk in  
 152 addition to any court costs.

153 3. Any person who willfully fails to properly respond to a  
 154 citation issued under paragraph (b) shall, in addition to the  
 155 citation, be charged with the offense of failing to respond to  
 156 the citation and, upon conviction, commits a misdemeanor of the  
 157 second degree, punishable as provided in s. 775.082 or s.  
 158 775.083. A written warning to this effect must be provided at  
 159 the time a citation is issued under paragraph (b).

160 (d) Any person cited for an infraction under paragraph (a)  
 161 or s. 556.116(2)(c) may post a bond, which must shall be equal  
 162 in amount to the applicable civil penalty plus any additional  
 163 court costs.

164 (e) A person charged with a noncriminal infraction under  
 165 paragraph (a) or s. 556.116(2)(c) may pay the applicable civil  
 166 penalty plus the additional court costs, by mail or in person,  
 167 within 30 days after the date of receiving the citation. If the  
 168 person cited pays the civil penalty, she or he is deemed to have  
 169 admitted to committing the infraction and to have waived the  
 170 right to a hearing on the issue of commission of the infraction.  
 171 The admission may be used as evidence in any other proceeding  
 172 under this chapter.

173 (f) Any person may elect to have a hearing on the  
 174 commission of the infraction appear before the county court. A

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175 ~~person who elects to have a hearing waives and if so electing is~~  
 176 ~~deemed to have waived~~ the limitations on the civil penalties  
 177 ~~penalty~~ specified in paragraph (c). The court, after a hearing,  
 178 shall make a determination as to whether an infraction has been  
 179 committed. If the commission of an infraction has been proven,  
 180 the court may impose a civil penalty not to exceed the  
 181 applicable civil penalty \$5,000 plus court costs for each  
 182 infraction. In determining the amount of the civil penalty, the  
 183 court may consider previous noncriminal infractions committed.

184 (g) At a court hearing under this chapter, the commission  
 185 of a charged infraction must be proven by a preponderance of the  
 186 evidence.

187 (h) If the court finds that a person is found by a judge or  
 188 hearing official to have committed an infraction, the person may  
 189 appeal that finding or the amount of the civil penalties imposed  
 190 to the circuit court.

191 (i) Sunshine State One-Call of Florida, Inc., may, at its  
 192 own cost, retain an attorney to assist in the presentation of  
 193 relevant facts and law in the county court proceeding pertaining  
 194 to the citation issued under this section. The corporation may  
 195 also appear in any case appealed to the circuit court if a  
 196 county court judge finds that an infraction of the chapter was  
 197 committed. An appellant in the ~~circuit~~ court proceeding shall  
 198 timely notify the corporation of any appeal under this section.

199 (2) REPORT OF INFRACTIONS.—By March 31 of each year, each  
 200 clerk of court shall submit a report to the State Fire Marshal  
 201 and Sunshine State One-Call of Florida, Inc., listing each  
 202 citation issued for a violation notice written under paragraph

203 (1) (a) and s. 556.116(2)(c) which has been filed in that county

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204 during the preceding calendar year. The report must state the  
 205 name and address of the member or excavator who committed each  
 206 infraction, the enforcement authority, the specific statutory  
 207 infraction, and the type of underground facility related to the  
 208 infraction and must indicate whether or not the civil penalty  
 209 for the infraction was paid.

210 (3) MISDEMEANORS.—

211 (a) Any person who knowingly and willfully removes or  
 212 otherwise destroys the valid stakes or other valid physical  
 213 markings described in s. 556.105(5)(a) and (b) used to mark the  
 214 horizontal route of an underground facility commits a  
 215 misdemeanor of the second degree, punishable as provided in s.  
 216 775.082 or s. 775.083. For purposes of this subsection, stakes  
 217 or other nonpermanent physical markings are considered valid for  
 218 30 calendar days after information is provided to the system  
 219 under s. 556.105(1)(a).

220 (b) Any person who knowingly and willfully removes or  
 221 damages a permanent marker placed to identify the approximate  
 222 location of an underground facility commits a misdemeanor of the  
 223 second degree, punishable as provided in s. 775.082 or s.  
 224 775.083.

225 Section 3. Section 556.116, Florida Statutes, is amended to  
 226 read:

227 556.116 High-priority subsurface installations; special  
 228 procedures.—

229 (1) ~~As used in this section, the term:~~

230 ~~(a) "Division" means the Division of Administrative~~  
 231 ~~Hearings.~~

232 ~~(b) "High-priority subsurface installation" means an~~

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233 ~~underground gas transmission or gas distribution pipeline, an~~  
 234 ~~underground pipeline used to transport gasoline, jet fuel, or~~  
 235 ~~any other refined petroleum product or hazardous or highly~~  
 236 ~~volatile liquid, such as anhydrous ammonia or carbon dioxide, if~~  
 237 ~~the pipeline is deemed to be critical by the operator of the~~  
 238 ~~pipeline and is identified as a high-priority subsurface~~  
 239 ~~installation to an excavator who has provided a notice of intent~~  
 240 ~~to excavate pursuant to s. 556.105(1), or would have been~~  
 241 ~~identified as a high-priority subsurface installation except for~~  
 242 ~~the excavator's failure to give proper notice of intent to~~  
 243 ~~excavate.~~

244 ~~(c) "Incident" means an event that involves damage to a~~  
 245 ~~high-priority subsurface installation that has been identified~~  
 246 ~~as such by the operator according to the notification procedures~~  
 247 ~~set forth in subsection (2) and that:~~

248 ~~1. Results in death or serious bodily injury requiring~~  
 249 ~~inpatient hospitalization.~~

250 ~~2. Results in property damage, including service-~~  
 251 ~~restoration costs, in an amount in excess of \$50,000 or~~  
 252 ~~interruption of service to 2,500 or more customers.~~

253 ~~(2)~~ When an excavator proposes to excavate or demolish  
 254 within 15 feet of the horizontal route of an underground  
 255 facility that has been identified as a high-priority subsurface  
 256 installation by the operator of the facility, the operator  
 257 shall, in addition to identifying the horizontal route of its  
 258 facility as set forth in s. 556.105(5) (a) and (b), and within  
 259 the time period set forth in s. 556.105(9) (a) for a positive  
 260 response, notify the excavator that the facility is a high-  
 261 priority subsurface installation. If the member operator

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262 provides such timely notice of the existence of a high-priority  
 263 subsurface installation, an excavator shall notify the operator  
 264 of the planned excavation start date and time before beginning  
 265 excavation. If the member operator does not provide timely  
 266 notice, the excavator may proceed, after waiting the prescribed  
 267 time period set forth in s. 556.105(9) (a), to excavate without  
 268 notifying the member operator of the excavation start date and  
 269 time. The exemptions stated in s. 556.108 apply to the  
 270 notification requirements in this subsection.

271 (2) (a) (3) (a) An alleged commission of an infraction listed  
 272 in s. 556.107(1) which results in an incident must be reported  
 273 to the system and the State Fire Marshal by a member operator or  
 274 an excavator within 24 hours after learning of the alleged  
 275 occurrence of an incident.

276 (b) Upon receipt of an allegation that an incident has  
 277 occurred, the member operator or excavator system shall transmit  
 278 an incident report to the State Fire Marshal, who shall ~~division~~  
 279 ~~and contract with the division so that the division may conduct~~  
 280 an investigation a hearing to determine whether an incident has  
 281 occurred, and, if so, whether a violation of s. 556.107(1) (a)  
 282 was a proximate cause of the incident. The State Fire Marshal  
 283 may authorize its agents as provided in ss. 633.114, 633.116,  
 284 and 633.118 to conduct investigations of incidents ~~The contract~~  
 285 ~~for services to be performed by the division must include~~  
 286 ~~provisions for the system to reimburse the division for any~~  
 287 ~~costs incurred by the division for court reporters, transcript~~  
 288 ~~preparation, travel, facility rental, and other customary~~  
 289 ~~hearing costs, in the manner set forth in s. 120.65(9).~~

290 (c) The State Fire Marshal or agents as provided in ss.

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291 ~~633.114, 633.116, and 633.118 division has jurisdiction in a~~  
 292 ~~proceeding under this section to determine the facts and law~~  
 293 ~~concerning an alleged incident. The division may issue a~~  
 294 ~~citation and impose a civil penalty fine against a violator in~~  
 295 ~~an amount not to exceed \$50,000 if the person violated a~~  
 296 ~~provision of s. 556.107(1)(a) and that violation was a proximate~~  
 297 ~~cause of the incident. However, if a state agency or political~~  
 298 ~~subdivision caused the incident, the state agency or political~~  
 299 ~~subdivision may not be fined in an amount in excess of \$10,000.~~

300 (d) The civil penalty A fine imposed under this subsection  
 301 by the division is in addition to any amount payable as a result  
 302 of a citation relating to the incident under s. 556.107(1)(a).

303 (e) If an additional civil penalty is imposed by the State  
 304 Fire Marshal or his or her agents, 5 percent of the civil  
 305 penalty must be retained by the clerk to cover administrative  
 306 costs, and the remainder of the civil penalty must be equally  
 307 distributed between a program created to procure equipment,  
 308 supplies, and educational training designed to mitigate  
 309 firefighter exposure to hazardous, cancer-causing chemicals and  
 310 between the system to be used exclusively for damage-prevention  
 311 education A fine against an excavator or a member operator  
 312 imposed under this subsection shall be paid to the system, which  
 313 shall use the collected fines to satisfy the costs incurred by  
 314 the system for any proceedings under this section. To the extent  
 315 there are any funds remaining, the system may use the funds  
 316 exclusively for damage-prevention education.

317 (f) Any excavator or member operator who commits a  
 318 noncriminal infraction under s. 556.116(2)(c) must be provided a  
 319 written warning at the time a citation is issued stating that

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320 any person who willfully fails to properly respond to a citation  
 321 must, in addition to the citation, be charged with the offense  
 322 of failing to respond to the citation and, upon conviction,  
 323 commits a misdemeanor of the second degree, punishable as  
 324 provided in s. 775.082 or s. 775.083.

325 (g) This section does not change the basis for civil  
 326 liability. The findings and results of an investigation a  
 327 hearing under this section may not be used as evidence of  
 328 liability in any civil action.

329 ~~(4)(a) The division shall issue and serve on all original~~  
 330 ~~parties an initial order that assigns the case to a specific~~  
 331 ~~administrative law judge and requests information regarding~~  
 332 ~~scheduling the final hearing within 5 business days after the~~  
 333 ~~division receives a petition or request for hearing. The~~  
 334 ~~original parties in the proceeding include all excavators and~~  
 335 ~~member operators identified by the system as being involved in~~  
 336 ~~the alleged incident. The final hearing must be conducted within~~  
 337 ~~60 days after the date the petition or the request for a hearing~~  
 338 ~~is filed with the division.~~

339 ~~(b) Unless the parties otherwise agree, venue for the~~  
 340 ~~hearing shall be in the county in which the underground facility~~  
 341 ~~is located.~~

342 ~~(c) An intervenor in the proceeding must file a petition to~~  
 343 ~~intervene no later than 15 days before the final hearing. A~~  
 344 ~~person who has a substantial interest in the proceeding may~~  
 345 ~~intervene.~~

346 ~~(5) The following procedures apply:~~

347 ~~(a) Motions shall be limited to the following:~~

348 ~~1. A motion in opposition to the petition.~~

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349 ~~2. A motion requesting discovery beyond the informal~~  
 350 ~~exchange of documents and witness lists described in paragraph~~  
 351 ~~(c). Upon a showing of necessity, additional discovery may be~~  
 352 ~~permitted in the discretion of the administrative law judge, but~~  
 353 ~~only if the discovery can be completed no later than 5 days~~  
 354 ~~before the final hearing.~~

355 ~~3. A motion for continuance of the final hearing date.~~

356 ~~(b) All parties shall attend a prehearing conference for~~  
 357 ~~the purpose of identifying the legal and factual issues to be~~  
 358 ~~considered at the final hearing, the names and addresses of~~  
 359 ~~witnesses who may be called to testify at the final hearing,~~  
 360 ~~documentary evidence that will be offered at the final hearing,~~  
 361 ~~the range of penalties that may be imposed, and any other matter~~  
 362 ~~that would expedite resolution of the proceeding. The prehearing~~  
 363 ~~conference may be held by telephone conference call.~~

364 ~~(c) Not later than 5 days before the final hearing, the~~  
 365 ~~parties shall furnish to each other copies of documentary~~  
 366 ~~evidence and lists of witnesses who may testify at the final~~  
 367 ~~hearing.~~

368 ~~(d) All parties shall have an opportunity to respond, to~~  
 369 ~~present evidence and argument on all issues involved, to conduct~~  
 370 ~~cross-examination and submit rebuttal evidence, and to be~~  
 371 ~~represented by counsel or other qualified representative.~~

372 ~~(e) The record shall consist only of:~~

373 ~~1. All notices, pleadings, motions, and intermediate~~  
 374 ~~rulings.~~

375 ~~2. Evidence received during the final hearing.~~

376 ~~3. A statement of matters officially recognized.~~

377 ~~4. Proffers of proof and objections and rulings thereon.~~

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378 ~~5. Matters placed on the record after an ex parte~~  
 379 ~~communication.~~

380 ~~6. The written final order of the administrative law judge~~  
 381 ~~presiding at the final hearing.~~

382 ~~7. The official transcript of the final hearing.~~

383 ~~(f) The division shall accurately and completely preserve~~  
 384 ~~all testimony in the proceeding and, upon request by any party,~~  
 385 ~~shall make a full or partial transcript available at no more~~  
 386 ~~than actual cost.~~

387 ~~(g) The administrative law judge shall issue a final order~~  
 388 ~~within 30 days after the final hearing or the filing of the~~  
 389 ~~transcript thereof, whichever is later. The final order of the~~  
 390 ~~administrative law judge must include:~~

391 ~~1. Findings of fact based exclusively on the evidence of~~  
 392 ~~record and matters officially recognized.~~

393 ~~2. Conclusions of law. In determining whether a party has~~  
 394 ~~committed an infraction of s. 556.107(1)(a), and whether the~~  
 395 ~~infraction was a proximate cause of an incident, the commission~~  
 396 ~~of an infraction must be proven by a preponderance of the~~  
 397 ~~evidence.~~

398 ~~3. Imposition of a fine, if applicable.~~

399 ~~4. Any other information required by law or rule to be~~  
 400 ~~contained in a final order.~~

401 ~~The final order of the administrative law judge constitutes~~  
 402 ~~final agency action subject to judicial review pursuant to s.~~  
 403 ~~120.68.~~

404 ~~Section 4. Section 556.117, Florida Statutes, is created to~~  
 405 ~~read:~~

406

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407        556.117 Underground facility damage prevention review.-  
408        Sunshine State One-Call of Florida, Inc., shall review the  
409        reports submitted by the clerks of court to the State Fire  
410        Marshal and any complaints of alleged violations under this  
411        chapter to identify issues or potential issues with damage  
412        prevention and enforcement. The corporation shall identify areas  
413        in the state where additional education related to damage  
414        prevention and enforcement is needed and shall recommend  
415        solutions to remedy issues related to damage prevention and  
416        enforcement. The corporation shall, by October 1 of each year,  
417        submit to the Governor, the President of the Senate, and the  
418        Speaker of the House of Representatives an analysis of its  
419        reviews and any recommendations for improving underground  
420        facility damage prevention and enforcement.  
421        Section 5. This act shall take effect July 1, 2020.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/26/20  
Meeting Date

1464  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name B. D. Jagerst

Job Title \_\_\_\_\_

Address 516 N Adams  
Street

Phone \_\_\_\_\_

32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/26/20

*Meeting Date*

1464

*Bill Number (if applicable)*

191488

*Amendment Barcode (if applicable)*

Topic \_\_\_\_\_

Name Dale Calhoun

Job Title Executive Director

Address PO Box 11026

Phone 8506810496

*Street*

Tallahassee

FL

32302

Email dale@floridagas.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Florida Natural Gas Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1634

INTRODUCER: Education Committee and Senator Stargel

SUBJECT: Parental Rights

DATE: February 24, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Brick</u>	<u>Sikes</u>	<u>ED</u>	<b>Fav/CS</b>
3.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1634 establishes the “Parents’ Bill of Rights.” The bill provides that the state, its political subdivisions, any other governmental entity, or other institution may not infringe upon the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of a minor child. If those entities infringe upon a parent’s fundamental right, they must demonstrate that the action is reasonable and necessary to achieve a compelling state interest, and the action must be narrowly tailored and not otherwise served by less restrictive means.

The bill enumerates a list of rights that a parent possesses in order to direct the education of his or her child and be informed about the child’s educational programs. The bill also requires the school district to promote parental involvement in the public school system by providing access to the child’s studies and instructional materials while also recognizing a parent’s right to withdraw the child from objectionable portions of the school’s curriculum.

The bill also requires a parent’s permission before a health care practitioner may provide services, prescribe medicine to the child, or perform a medical procedure, unless otherwise provided by law. The bill provides a misdemeanor penalty for a health care practitioner or similar person who violates the health care provisions and subjects these persons to disciplinary actions.

The bill takes effect July 1, 2020.

## II. Present Situation:

### Constitutional Rights of Parents

#### *Parental Guarantees in the United States Constitution*

The Fourteenth Amendment to the U.S. Constitution provides that no State

[S]hall deprive any person of life, *liberty*, or property, without due process of law.

The U.S. Supreme Court has recognized that the Due Process clause includes an additional component that provides a heightened level of protection against any governmental interference where certain fundamental rights and liberty interests are involved. In *Troxel v. Granville*,<sup>1</sup> a case to terminate parental rights, the Court noted that the Fourteenth Amendment “liberty interest” at issue – the interest that parents had in the care, custody, and control over their children – was perhaps the oldest of any fundamental liberty interest that the Court had recognized.

The Court reflected that, in a 1923 decision,<sup>2</sup> it determined that the “liberty” interest protected by the Due Process Clause included the right of parents to “establish a home and bring up children” and “to control the education of their own.”

The Court also noted as early as 1925<sup>3</sup> that a child was not simply the creature of the State and that the people who nurture the child and direct the child’s destiny have the right, and the high duty, to recognize and prepare the child for additional obligations. In 1944, the Court confirmed the right of parents to direct the upbringing of their children when it stated:

It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.<sup>4</sup>

Finally, in recounting the history of parental authority in 1979, the Court stated, “We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected.”<sup>5</sup>

#### *Parental Guarantees in the State Constitution*

Similarly, the Florida Supreme Court has determined that the fundamental liberty interest in parenting one’s child “is protected by the Florida and federal constitutions. In Florida, it is specifically protected by our privacy provision.”<sup>6</sup> The Court also stated that the state constitutional privacy provision contained in Article I, section 23 affords greater protection than that of the federal constitution.

---

<sup>1</sup> *Troxel v. Granville*, 530 U.S. 57 (2000).

<sup>2</sup> *Troxel* quoting *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923).

<sup>3</sup> *Troxel* quoting *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925).

<sup>4</sup> *Troxel* quoting *Prince v. Massachusetts*, 321 U.S. 158 (1944).

<sup>5</sup> *Troxel* quoting *Parham v. J.R.* 442 U.S. 584, 602 (1979).

<sup>6</sup> *Beagle v. Beagle*, 678 So. 2d 1271, 1275 (Fla. 1996).

The court wrote in *Winfield v. Division of Pari-Mutuel Wagering*<sup>7</sup> that the standard of review that must be used to evaluate whether a state has intruded into a citizen's private life is the compelling state interest standard. Under that test, the burden of proof is on the state to justify its intrusion on privacy. The burden can be met by the state if it demonstrates that the regulation being challenged serves a compelling state interest and the regulation accomplishes its goal by using the least intrusive means.<sup>8</sup>

## **Statutory Rights of Parents of Students**

### ***Mandatory Attendance***

All children who turn 6 years by February 1 of any school year and have not attained the age of 16 years are required to attend school regularly during the entire school term.<sup>9</sup> Parents have the option to comply with school attendance laws by enrolling the student in a public school; a parochial, religious, or denominational school; a private school; a home education program; or a private tutoring program.<sup>10</sup> The district school superintendent may authorize certificates of exemptions from school attendance requirements in certain situations.<sup>11</sup> A student who holds a valid certificate of exemption is exempt from attending school. A certificate of exemption expires at the end of the school year.<sup>12</sup>

A parent of a K-12 student is afforded numerous statutory rights.<sup>13</sup> Each school district is required to:

- Provide a parent with specific information about his or her child's educational progress, comprehensive information about opportunities for involvement in the child's education, and a framework for building and strengthening partnerships among parents and school district personnel.<sup>14</sup>
- Afford a parent the opportunity to enroll his or her child in instruction for exceptional students or challenge a district school board's determination of the child's eligibility for a gifted or special education program.<sup>15</sup>
- Establish a policy enabling a parent to object to and contest specific instructional materials.<sup>16</sup>
- Notify a parent and obtain his or her consent before a public school student may be transported in a privately owned motor vehicle to a school function or referred to contraceptive services at school facilities.<sup>17</sup>

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<sup>7</sup> *Winfield v. Division of Pari-Mutual Wagering*, 477 So. 2d 544, 548 (Fla. 1985).

<sup>8</sup> *Id.*

<sup>9</sup> Section 1003.21, F.S.

<sup>10</sup> Section 1002.20(2)(b), F.S.

<sup>11</sup> Section 1003.21, F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 1002.20, F.S.

<sup>14</sup> Section 1002.23, F.S.

<sup>15</sup> Section 1003.57, F.S.

<sup>16</sup> Section 1006.28(1)(a)2.-3., F.S.

<sup>17</sup> Sections 1002.20(3)(e) and (22)(c), F.S.

No educational agency or institution may collect, obtain, or retain information on the political affiliation, voting history, religious affiliation, or biometric information of a student or a parent or sibling of the student.<sup>18</sup> In addition, a parent may exempt his or her child from:<sup>19</sup>

- A health examination on religious grounds.
- School immunization requirements on religious or certain health grounds.<sup>20</sup>
- Performing surgery or dissection in a biological science class.
- Receiving instruction on reproductive health or any disease, including HIV/AIDS.<sup>21</sup>
- Reciting the pledge of allegiance.
- Reciting the Declaration of Independence.<sup>22</sup>

### ***Access to Records and Information***

The rights of students and their parents with respect to education records created, maintained, or used by public educational institutions and agencies are protected.<sup>23</sup> Specifically, a parent of a K-12 student has the right to:<sup>24</sup>

- Receive accurate and timely information regarding the student's academic progress and must be informed of ways a parent can help a student succeed in school.
- Access the student's education records, including the right to inspect and review those records.
- Challenge the content of education records in order to ensure that the records are not inaccurate, misleading, or otherwise a violation of privacy or other rights.
- Privacy with respect to the student's records and reports.
- Receive annual notice of the parent's rights with respect to education records.
- Receive report cards on a regular basis that clearly depict and grade the student's academic performance in each class or course, the student's conduct, and the student's attendance.<sup>25</sup>
- Receive reports at regular intervals of the academic progress and other needed information regarding the student.
- Receive timely notification of any verified report of a substance abuse violation by the student.
- Access information relating to the school district's policies for promotion or retention, including high school graduation requirements.<sup>26</sup>
- Access information relating to student eligibility to participate in extra-curricular activities.<sup>27</sup>
- Access information relating to the state public education system, standards, and requirements.<sup>28</sup>

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<sup>18</sup> Section 1002.222(1)(a), F.S.

<sup>19</sup> Section 1002.20, F.S.

<sup>20</sup> Section 1002.20(3)(b), F.S.

<sup>21</sup> Section 1002.20(3)(d), F.S.

<sup>22</sup> Section 1003.421(4), F.S.

<sup>23</sup> Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g; and s. 1002.22, F.S.

<sup>24</sup> Sections 1002.20, 1002.22(2), and 1006.28, F.S.

<sup>25</sup> Section 1002.20(14), F.S.

<sup>26</sup> Section 1008.25, F.S.

<sup>27</sup> Section 1006.195, F.S.

<sup>28</sup> Section 1002.23, F.S.

- Access, review, object to, and challenge instructional and supplemental education materials.<sup>29</sup>

### ***Parental Consent for Health Care***

Any medical decision made to address a student's needs is a matter between the student, the student's parent, and a competent health care professional chosen by the parent.<sup>30</sup> The right to consent to medical treatment for a child resides with a parent.<sup>31</sup> District school boards may adopt policies to ensure an appropriate response in emergency situations and the provision of first aid and emergency medical care.<sup>32</sup> A parent has the right to be notified and give consent for proposed medical procedures on his or her child, unless, within a reasonable degree of medical certainty, delay in the provision of emergency medical care would endanger the health or physical well-being of the child, and the emergency medical care or treatment is administered in a licensed hospital or college health service.<sup>33</sup>

## **III. Effect of Proposed Changes:**

### **Sections 1 and 2 – The Parents’ Bill of Rights**

The bill creates a new chapter in the Florida Statutes, chapter 1014, which is entitled “Parents’ Bill of Rights” and contains sections 1014.01 – 1014.06, F.S.

### **Section 3 – Legislative Findings and Definition**

Section 3 contains the legislative findings and a definition. In these provisions, the Legislature finds that:

- It is a fundamental right of parents to direct the upbringing, education, and care of their minor children;
- Important information relating to a minor child should not be withheld, either inadvertently or purposefully, from a parent, including information regarding the minor child’s health, well-being, and education, while the child is in the custody of the school district; and
- It is necessary to establish a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.

A parent is defined to be a person who has legal custody of a minor child as a natural or adoptive parent or a legal guardian.

### **Section 4 – The Infringement of Parental Rights**

The bill provides that the following entities may not infringe on the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of a parent’s minor child:

- The state;

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<sup>29</sup> Sections 1002.20(19) and 1006.28, F.S.

<sup>30</sup> Section 1006.0625, F.S.

<sup>31</sup> *O’Keefe v. Orea*, 731 So. 2d 680, 686 (Fla. 1st DCA 1998).

<sup>32</sup> Section 1001.43, F.S.

<sup>33</sup> Section 743.0645, F.S.

- State political subdivisions;
- Any other governmental entity; or
- Any other institution.

If any of these entities infringes on a parent's fundamental right, it must demonstrate that the action is reasonable and necessary to achieve a compelling state interest and the action is narrowly tailored and is not otherwise served by a less restrictive means. This "compelling interest" standard is discussed above in the Present Situation.

## **Section 5 – Parental Rights**

### ***Rights Reserved to the Parent of a Minor Child***

This section establishes that all parental rights are reserved to the parent of a minor child "without obstruction or interference" by any of the above-referenced governmental entities. Those rights include, but are not limited to the right to:

- Direct the education and care of the minor child.
- Direct the upbringing and the moral or religious training of the minor child.
- Enroll the minor child in a public school or, as an alternative to public education, a private school, religious school, a home education program, or other available option.
- Access and review all school records relating to the minor child.
- Make health care decisions for the minor child, unless otherwise prohibited by law.
- 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.
- Consent in writing before a biometric scan of the minor child is made, shared, or stored.
- Consent in writing before any record of the minor child's blood or deoxyribonucleic acid (DNA) is created, stored, or shared, except as required by general law or authorized pursuant to a court order.
- Consent in writing before the state or any of its political subdivisions makes a video or voice recording of the minor child unless the recording is made during or as part of a court proceeding, or is made as part of a forensic interview in a criminal or Department of Children and Families investigation, or is to be used solely for the following purposes:
  - A safety demonstration, including the maintenance of order and discipline in the common areas of a school or on student transportation vehicles;
  - A purpose related to a legitimate academic or extracurricular activity;
  - A purpose related to regular classroom instructions;
  - Security or surveillance of buildings or grounds; or
  - A photo identification card.
- Be notified promptly if an employee of the state, any of its political subdivisions, any other governmental entity, or any other institution suspects that a criminal offense has been committed against his or her minor child, unless the incident has first been reported to a law enforcement agency or the Department of Children and Families and notifying the parent would impede the investigation.

The bill clarifies that the rights expressed in this section do not:

- Authorize a parent of a minor child 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 employee 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; or
- Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.

### ***Discipline***

Any employee of any of the above-referenced entities who encourages or coerces, or attempts to encourage or coerce a minor child to withhold information from his or her parent may be subject to disciplinary action.

### ***Inalienable Rights***

The final subsection states that a parent of a minor child has inalienable rights that are more comprehensive than those enumerated in this section, unless those rights have been legally waived or terminated. The bill also provides that the chapter does not prescribe all of a parent's rights and unless required by law, a parent's rights may not be limited or denied. Additionally, the chapter may not be construed to apply to a parental action or decision that would end life.

### **Section 6 – School District Notifications on Parental Rights**

The bill requires each school board, in consultation with parents, teachers, and administrators, to develop and then adopt a policy that promotes parental involvement in the public school system. The policy must include:

- A plan, pursuant to s. 1002.23, F.S., for parental participation to improve parent and teach cooperation in areas such as homework, school attendance, and discipline.
- A procedure, pursuant to s. 1002.20(19)(b), F.S., for a parent to learn about the minor child's course of study, including the source of any supplemental education materials.
- Procedures for a parent to object to instructional material, which includes all classroom materials and school activities, pursuant to s 1006.28(2)(a)2., F.S. and a process for withdrawing the child from the activity, class, or program. The objections may be based on beliefs regarding morality, sex, and religion or the belief that the materials or activities are harmful. Instructional materials are defined to include, but are not limited to, textbooks, workbooks and worksheets, handouts, software, applications, Internet courses, and any and all digital media available to students pursuant to their role as a student in public school.
- Procedures, pursuant to s. 1002.20(3)(d), F.S. for a parent to withdraw the minor child from any portion of the school district's plan as required under s. 1003.42(2)(n), F.S., which 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 the child's participation. The procedures must provide for a parent to be notified in advance of the course content so that he or she may withdraw the child 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 at the child's school, including those that are extracurricular or part of the school curriculum.

- Procedures for a parent to learn about parental rights and responsibilities under general law, including all of the following:
  - The right to opt the minor child out of any portion of the school district's comprehensive health education required by statute that relates to sex education instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality.
  - A plan to disseminate information about school choice options, including open enrollment.
  - The right of a parent to exempt the minor child from immunizations.
  - The right of a parent to review statewide, standardized assessment results.
  - The right to enroll the minor child in gifted or special education programs.
  - The right of a parent to inspect school district instructional materials.
  - The right to of a parent to access information relating to the school district's policies for promotion or retention, including high school graduation requirements.
  - The right of a parent to receive a school report card and be informed of the child's attendance requirements.
  - The right of a parent to access information relating to the state public education system, state standards, report card requirements, attendance requirements, and instructional materials requirements.
  - The right of a parent to participate in parent-teacher association and organizations sanctioned by a district school board or the Department of Education.
  - The right of a parent to opt out of any district-level data collection relating to the minor child that is not required by law.

The information required in this section may be provided by the district school board electronically or posted on its website.

A parent may request, in writing, from the district school superintendent, the information required under this section. The superintendent must provide the information to the parent within 10 days. If the superintendent denies a parent's request for information or does not respond to the parent's request within 10 days, the parent may appeal the denial to the district school board. The parent's appeal must be placed on the agenda for the board's next public meeting. If it is too late for a parent's appeal to be placed on the agenda at the next meeting, it must be included on the agenda for the following meeting.

### **Section 7 – Parental Consent for Health Care Services**

Unless the law provides otherwise,

- A health care practitioner, as defined in s. 456.001, F.S., may not provide, solicit, or arrange to provide health care services or prescribe medicine to the minor child without first obtaining written consent from the parent.
- A person, as defined by statute to include individuals, children, firms, associations, joint adventures, partnership, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations, or individual employed by the person, may not provide or solicit or arrange to provide health care services or prescribe medicine to a minor child without first obtaining written parental consent.

Except for services provided by a clinical laboratory that are not delivered through a direct encounter with the minor at the clinical laboratory facility, and unless otherwise provided by law or a court order, a provider,<sup>34</sup> as defined in s. 408.803, F.S., may not allow a medical procedure to be performed on a minor child in its facility without first obtaining written consent from the parent.

### ***Exception***

The provisions of this section which addresses parental consent for health care services do not apply to abortion, which is governed by chapter 390.

### ***Penalties***

A health care practitioner or other person who violates this section is subject to disciplinary action pursuant to s. 408.813 or s. 456.072, F.S., sections 8 and 9 of the bill, and commits a first degree misdemeanor which is punishable by up to one year imprisonment and a fine not to exceed \$1,000.<sup>35</sup>

## **Section 8 – Administrative Fines and Violations**

The Agency for Health Care Administration may impose an administrative fine for a violation of the provisions regarding the parental consent for health care services. The violation is an unclassified violation and the fine may not exceed \$500 for each violation.

## **Section 9 – Grounds for Discipline**

The Department of Health may take disciplinary action against someone who fails to comply with the parental consent requirements for health care services. The disciplinary actions range from refusing to certify a license or certify the license with restrictions, suspending or permanently revoking a license, restricting a license, imposing an administrative fine not to exceed \$10,000 for each offense, issuing a reprimand or letter of concern, placing the licensee on probation, taking corrective action, imposing an administrative fine for violations of patient rights, requiring the refund of fees billed and collected, and requiring that the practitioner undergo remedial education.<sup>36</sup>

## **Section 10 – Effective Date**

The bill takes effect July 1, 2020.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>34</sup> Section 408.803(11), F.S., defines a provider to mean any activity, service, agency, or facility regulated by the agency and listed in s. 408.802, F.S.

<sup>35</sup> Sections 775.082(4)(a) and 775.083(1)(d), F.S.

<sup>36</sup> Section 456.072(1), F.S.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

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: 408.813 and 456.072.

This bill creates the following sections of the Florida Statutes: 1014.01, 1014.02, 1014.03, 1014.04, 1014.05, and 1014.06.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Education on February 17, 2020:**

The committee substitute clarifies that the provision of the bill prohibiting health care practitioners from providing or soliciting or arranging to provide health care services or prescribe medicinal drugs to a minor child without first obtaining written parental consent does not apply to services provided by a clinical laboratory, unless the services are delivered through a direct encounter with the minor at the clinical laboratory facility.

The committee substitute provides that the term “clinical laboratory” has the same meaning as otherwise provided in law related to clinical laboratory personnel of health testing services.

- B. **Amendments:**

None.



694008

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/27/2020	.	
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The Committee on Rules (Rodriguez) recommended the following:

**Senate Amendment**

Delete lines 102 - 103

and insert:

(e) The right to make health care decisions consistent with the established standard of care for his or her minor child, unless otherwise prohibited by law.



957918

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/27/2020	.	
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The Committee on Rules (Rodriguez) recommended the following:

**Senate Amendment**

Delete lines 140 - 162  
and insert:  
her minor child in violation of general law, or is otherwise  
harmful to the mental, physical, and emotional well-being of a  
minor or contrary to the minor's best interest;

(b) Condone, authorize, approve, or apply to a parental  
action or decision that would end life or endanger the health,  
safety, or well-being of the minor child;

(c) Prohibit a court of competent jurisdiction, a law



957918

12 enforcement officer, or an employee of a government agency that  
13 is responsible for child welfare from acting in his or her  
14 official capacity within the reasonable and prudent scope of his  
15 or her authority; or

16 (d) Prohibit a court of competent jurisdiction from issuing  
17 an order that is otherwise authorized by law.

18 (3) An employee of the state, any of its political  
19 subdivisions, or any other governmental entity who encourages or  
20 coerces, or attempts to encourage or coerce, a minor child to  
21 withhold information from his or her parent may be subject to  
22 disciplinary action.

23 (4) A parent of a minor child in this state has inalienable  
24 rights that are more comprehensive than those listed in this  
25 section, unless such rights have been legally waived or  
26 terminated. This chapter does not prescribe all rights to a  
27 parent of a minor child in this state. Unless required by law,  
28 the rights of a parent of a minor child in this state may not be  
29 limited or denied. This chapter may not be construed to apply to  
30 a parental action or decision that would end life or endanger  
31 the health, safety, or well-being of the minor child.



820782

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/27/2020	.	
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The Committee on Rules (Rodriguez) recommended the following:

**Senate Amendment**

Delete lines 147 - 149  
and insert:  
authority;

(d) Prohibit a court of competent jurisdiction from issuing  
an order that is otherwise permitted by law; or

(e) Limit the constitutional privacy rights of students and  
parents, including those rights pursuant to s. 1002.22(2), under  
the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C.  
s. 1232g, and its implementing regulations.



232476

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/27/2020	.	
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The Committee on Rules (Rodriguez) recommended the following:

**Senate Amendment**

Delete line 179  
and insert:  
activities, pursuant to s. 1006.28(2)(a)2., and except in  
required courses or instruction, pursuant to s. 1003.42, a  
process for



888014

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/27/2020	.	
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The Committee on Rules (Stargel) recommended the following:

**Senate Substitute for Amendment (232476)**

Delete lines 177 - 188  
and insert:

(c) Procedures, adopted pursuant to s. 1006.28(2)(a)2., to allow a parent to object to instructional materials and other materials used in the classroom. Such objections may be based on beliefs regarding morality, sex, and religion or the belief that such materials are harmful. For purposes of this section, the term "instructional materials" has the same meaning as in s. 1006.29(2) and may include other materials used in the



888014

12 classroom, including workbooks and worksheets, handouts,  
13 software, applications, and any digital media made available to  
14 students.



396696

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/27/2020	.	
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The Committee on Rules (Rodriguez) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 263 - 268  
and insert:  
parental consent, unless obtaining such consent would  
endanger the health, safety, or well-being of the minor child.

(b) Except as otherwise provided by law, a person, as  
defined in s. 1.01, or an individual employed by such person may  
not provide or solicit or arrange to provide health care  
services or prescribe medicinal drugs to a minor child without  
first obtaining written parental consent, unless obtaining such



396696

12 consent would endanger the health, safety, or well-being of the  
13 minor child.

14  
15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17       Delete line 31

18 and insert:

19       permission; providing exceptions; prohibiting certain  
20       entities from taking

By the Committee on Education; and Senator Stargel

581-03785-20

20201634c1

1 A bill to be entitled  
 2 An act relating to parental rights; creating chapter  
 3 1014, F.S.; creating s. 1014.01, F.S.; providing a  
 4 short title; creating s. 1014.02, F.S.; providing  
 5 legislative findings; defining the term "parent";  
 6 creating s. 1014.03, F.S.; providing that the state,  
 7 its political subdivisions, other governmental  
 8 entities, or other institutions may not infringe on  
 9 parental rights without demonstrating specified  
 10 information; creating s. 1014.04, F.S.; providing that  
 11 a parent of a minor child has specified rights  
 12 relating to his or her minor child; prohibiting the  
 13 state from infringing upon specified parental rights;  
 14 prohibiting specified parental rights from being  
 15 limited or denied; providing that certain actions by  
 16 specified individuals are grounds for disciplinary  
 17 actions against those individuals; providing  
 18 construction; creating s. 1014.05, F.S.; requiring  
 19 each district school board in consultation with  
 20 parents, teachers, and administrators, to develop and  
 21 adopt a policy to promote parental involvement in the  
 22 public school system; providing requirements for such  
 23 policy; defining the term "instructional materials";  
 24 authorizing a district school board to provide such  
 25 policy electronically or on its website; authorizing a  
 26 parent to request certain information in writing;  
 27 providing a procedure for appealing the denial of such  
 28 information requests; creating s. 1014.06, F.S.;  
 29 prohibiting certain health care practitioners from

Page 1 of 11

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

581-03785-20

20201634c1

30 taking specified actions without a parent's written  
 31 permission; prohibiting certain entities from taking  
 32 specified actions relating to a minor's health care  
 33 without a parent's written permission; prohibiting a  
 34 health care facility from allowing certain actions  
 35 without a parent's written permission; providing  
 36 exceptions; providing for disciplinary actions and  
 37 criminal penalties; amending s. 408.813, F.S.;  
 38 providing that certain violations relating to parental  
 39 consent are grounds for administrative fines for  
 40 health care facilities; amending s. 456.072, F.S.;  
 41 providing that failure to comply with certain parental  
 42 consent requirements is grounds for disciplinary  
 43 action for health care practitioners; providing an  
 44 effective date.

45  
 46 Be It Enacted by the Legislature of the State of Florida:

47  
 48 Section 1. Chapter 1014, Florida Statutes, consisting of  
 49 ss. 1014.01-1014.06, is created and shall be entitled "Parents'  
 50 Bill of Rights."

51 Section 2. Section 1014.01, Florida Statutes, is created to  
 52 read:

53 1014.01 Short title.—This section and ss. 1014.02-1014.06  
 54 may be cited as the "Parents' Bill of Rights."

55 Section 3. Section 1014.02, Florida Statutes, is created to  
 56 read:

57 1014.02 Legislative findings and definition.—

58 (1) The Legislature finds that it is a fundamental right of

Page 2 of 11

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

581-03785-20

20201634c1

59 parents to direct the upbringing, education, and care of their  
 60 minor children. The Legislature further finds that important  
 61 information relating to a minor child should not be withheld,  
 62 either inadvertently or purposefully, from his or her parent,  
 63 including information relating to the minor child's health,  
 64 well-being, and education, while the minor child is in the  
 65 custody of the school district. The Legislature further finds it  
 66 is necessary to establish a consistent mechanism for parents to  
 67 be notified of information relating to the health and well-being  
 68 of their minor children.

69 (2) For purposes of this chapter, the term "parent" means a  
 70 person who has legal custody of a minor child as a natural or  
 71 adoptive parent or a legal guardian.

72 Section 4. Section 1014.03, Florida Statutes, is created to  
 73 read:

74 1014.03 Infringement of parental rights.—The state, any of  
 75 its political subdivisions, any other governmental entity, or  
 76 any other institution may not infringe on the fundamental rights  
 77 of a parent to direct the upbringing, education, health care,  
 78 and mental health of his or her minor child without  
 79 demonstrating that such action is reasonable and necessary to  
 80 achieve a compelling state interest and that such action is  
 81 narrowly tailored and is not otherwise served by a less  
 82 restrictive means.

83 Section 5. Section 1014.04, Florida Statutes, is created to  
 84 read:

85 1014.04 Parental rights.—

86 (1) All parental rights are reserved to the parent of a  
 87 minor child in this state without obstruction or interference

581-03785-20

20201634c1

88 from the state, any of its political subdivisions, any other  
 89 governmental entity, or any other institution, including, but  
 90 not limited to, all of the following rights of a parent of a  
 91 minor child in this state:

92 (a) The right to direct the education and care of his or  
 93 her minor child.

94 (b) The right to direct the upbringing and the moral or  
 95 religious training of his or her minor child.

96 (c) The right, pursuant to s. 1002.20(2)(b) and (6), to  
 97 enroll his or her minor child in a public school or, as an  
 98 alternative to public education, a private school, religious  
 99 school, a home education program, or other available options.

100 (d) The right, pursuant to s. 1002.20(13), to access and  
 101 review all school records relating to his or her minor child.

102 (e) The right to make health care decisions for his or her  
 103 minor child, unless otherwise prohibited by law.

104 (f) The right to access and review all medical records of  
 105 his or her minor child, unless prohibited by law or if the  
 106 parent is the subject of an investigation of a crime committed  
 107 against the minor child and a law enforcement agency or official  
 108 requests that the information not be released.

109 (g) The right to consent in writing before a biometric scan  
 110 of his or her minor child is made, shared, or stored.

111 (h) The right to consent in writing before any record of  
 112 his or her minor child's blood or deoxyribonucleic acid (DNA) is  
 113 created, stored, or shared, except as required by general law or  
 114 authorized pursuant to a court order.

115 (i) The right to consent in writing before the state or any  
 116 of its political subdivisions makes a video or voice recording

581-03785-20

20201634c1

117 of his or her minor child unless such recording is made during  
 118 or as part of a court proceeding or is made as part of a  
 119 forensic interview in a criminal or Department of Children and  
 120 Families investigation or is to be used solely for the following  
 121 purposes:

122 1. A safety demonstration, including the maintenance of  
 123 order and discipline in the common areas of a school or on  
 124 student transportation vehicles;

125 2. A purpose related to a legitimate academic or  
 126 extracurricular activity;

127 3. A purpose related to regular classroom instructions;

128 4. Security or surveillance of buildings or grounds; or

129 5. A photo identification card.

130 (j) The right to be notified promptly if an employee of the  
 131 state, any of its political subdivisions, any other governmental  
 132 entity, or any other institution suspects that a criminal  
 133 offense has been committed against his or her minor child,  
 134 unless the incident has first been reported to law enforcement  
 135 or the Department of Children and Families and notifying the  
 136 parent would impede the investigation.

137 (2) This section does not:

138 (a) Authorize a parent of a minor child in this state to  
 139 engage in conduct that is unlawful or to abuse or neglect his or  
 140 her minor child in violation of general law;

141 (b) Condone, authorize, approve, or apply to a parental  
 142 action or decision that would end life;

143 (c) Prohibit a court of competent jurisdiction, law  
 144 enforcement officer, or employee of a government agency that is  
 145 responsible for child welfare from acting in his or her official

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146 capacity within the reasonable and prudent scope of his or her  
 147 authority; or

148 (d) Prohibit a court of competent jurisdiction from issuing  
 149 an order that is otherwise permitted by law.

150 (3) An employee of the state, any of its political  
 151 subdivisions, or any other governmental entity who encourages or  
 152 coerces, or attempts to encourage or coerce, a minor child to  
 153 withhold information from his or her parent may be subject to  
 154 disciplinary action.

155 (4) A parent of a minor child in this state has inalienable  
 156 rights that are more comprehensive than those listed in this  
 157 section, unless such rights have been legally waived or  
 158 terminated. This chapter does not prescribe all rights to a  
 159 parent of a minor child in this state. Unless required by law,  
 160 the rights of a parent of a minor child in this state may not be  
 161 limited or denied. This chapter may not be construed to apply to  
 162 a parental action or decision that would end life.

163 Section 6. Section 1014.05, Florida Statutes, is created to  
 164 read:

165 1014.05 School district notifications on parental rights.—

166 (1) Each district school board shall, in consultation with  
 167 parents, teachers, and administrators, develop and adopt a  
 168 policy to promote parental involvement in the public school  
 169 system. Such policy must include:

170 (a) A plan, pursuant to s. 1002.23, for parental  
 171 participation in schools to improve parent and teacher  
 172 cooperation in such areas as homework, school attendance, and  
 173 discipline.

174 (b) A procedure, pursuant to s. 1002.20(19)(b), for a

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175 parent to learn about his or her minor child's course of study,  
 176 including the source of any supplemental education materials.

177 (c) Procedures for a parent to object to instructional  
 178 materials, including all classroom materials and school  
 179 activities, pursuant to s. 1006.28(2)(a)2., and a process for  
 180 withdrawing his or her minor child from the activity, class, or  
 181 program in which such materials or activities are used. Such  
 182 objections may be based on beliefs regarding morality, sex, and  
 183 religion or the belief that such materials or activities are  
 184 harmful. The term "instructional materials" includes, but is not  
 185 limited to, textbooks, workbooks and worksheets, handouts,  
 186 software, applications, Internet courses, and any and all  
 187 digital media available to students pursuant to their role as a  
 188 student in public school.

189 (d) Procedures, pursuant to s. 1002.20(3)(d), for a parent  
 190 to withdraw his or her minor child from any portion of the  
 191 school district's comprehensive health education required under  
 192 s. 1003.42(2)(n) that relates to sex education or instruction in  
 193 acquired immune deficiency syndrome education or any instruction  
 194 regarding sexuality if the parent provides a written objection  
 195 to his or her minor child's participation. Such procedures must  
 196 provide for a parent to be notified in advance of such course  
 197 content so that he or she may withdraw his or her minor child  
 198 from those portions of the course.

199 (e) Procedures, pursuant to s. 1006.195(1)(a), for a parent  
 200 to learn about the nature and purpose of clubs and activities  
 201 offered at his or her minor child's school, including those that  
 202 are extracurricular or part of the school curriculum.

203 (f) Procedures for a parent to learn about parental rights

Page 7 of 11

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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204 and responsibilities under general law, including all of the  
 205 following:

206 1. Pursuant to s. 1002.20(3)(d), the right to opt his or  
 207 her minor child out of any portion of the school district's  
 208 comprehensive health education required under s. 1003.42(2)(n)  
 209 that relates to sex education instruction in acquired immune  
 210 deficiency syndrome education or any instruction regarding  
 211 sexuality.

212 2. A plan to disseminate information, pursuant to s.  
 213 1002.20(6), about school choice options, including open  
 214 enrollment.

215 3. In accordance with s. 1002.20(3)(b), the right of a  
 216 parent to exempt his or her minor child from immunizations.

217 4. In accordance with s. 1008.22, the right of a parent to  
 218 review statewide, standardized assessment results.

219 5. In accordance with s. 1003.57, the right of a parent to  
 220 enroll his or her minor child in gifted or special education  
 221 programs.

222 6. In accordance with s. 1006.28(2)(a)1., the right of a  
 223 parent to inspect school district instructional materials.

224 7. In accordance with s. 1008.25, the right of a parent to  
 225 access information relating to the school district's policies  
 226 for promotion or retention, including high school graduation  
 227 requirements.

228 8. In accordance with s. 1002.20(14), the right of a parent  
 229 to receive a school report card and be informed of his or her  
 230 minor child's attendance requirements.

231 9. In accordance with s. 1002.23, the right of a parent to  
 232 access information relating to the state public education

Page 8 of 11

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233 system, state standards, report card requirements, attendance  
 234 requirements, and instructional materials requirements.

235 10. In accordance with s. 1002.23(4), the right of a parent  
 236 to participate in parent-teacher associations and organizations  
 237 that are sanctioned by a district school board or the Department  
 238 of Education.

239 11. In accordance with s. 1002.222(1)(a), the right of a  
 240 parent to opt out of any district-level data collection relating  
 241 to his or her minor child not required by law.

242 (2) A district school board may provide the information  
 243 required in this section electronically or post such information  
 244 on its website.

245 (3) A parent may request, in writing, from the district  
 246 school superintendent the information required under this  
 247 section. Within 10 days, the district school superintendent must  
 248 provide such information to the parent. If the district school  
 249 superintendent denies a parent's request for information or does  
 250 not respond to the parent's request within 10 days, the parent  
 251 may appeal the denial to the district school board. The district  
 252 school board must place a parent's appeal on the agenda for its  
 253 next public meeting. If it is too late for a parent's appeal to  
 254 appear on the next agenda, the appeal must be included on the  
 255 agenda for the subsequent meeting.

256 Section 7. Section 1014.06, Florida Statutes, is created to  
 257 read:

258 1014.06 Parental consent for health care services.—

259 (1)(a) Except as otherwise provided by law, a health care  
 260 practitioner, as defined in s. 456.001, may not provide or  
 261 solicit or arrange to provide health care services or prescribe

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262 medicinal drugs to a minor child without first obtaining written  
 263 parental consent.

264 (b) Except as otherwise provided by law, a person, as  
 265 defined in s. 1.01, or an individual employed by such person may  
 266 not provide or solicit or arrange to provide health care  
 267 services or prescribe medicinal drugs to a minor child without  
 268 first obtaining written parental consent.

269 (2) Except as otherwise provided by law or a court order, a  
 270 provider, as defined in s. 408.803, may not allow a medical  
 271 procedure to be performed on a minor child in its facility  
 272 without first obtaining written parental consent.

273 (3) This section does not apply to an abortion, which is  
 274 governed by chapter 390.

275 (4) This section does not apply to services provided by a  
 276 clinical laboratory, unless the services are delivered through a  
 277 direct encounter with the minor at the clinical laboratory  
 278 facility. For purposes of this subsection, the term "clinical  
 279 laboratory" has the same meaning as provided in s. 483.803.

280 (5) A health care practitioner or other person who violates  
 281 this section is subject to disciplinary action pursuant to s.  
 282 408.813 or s. 456.072, as applicable, and commits a misdemeanor  
 283 of the first degree, punishable as provided in s. 775.082 or s.  
 284 775.083.

285 Section 8. Paragraph (f) is added to subsection (3) of  
 286 section 408.813, Florida Statutes, to read:

287 408.813 Administrative fines; violations.—As a penalty for  
 288 any violation of this part, authorizing statutes, or applicable  
 289 rules, the agency may impose an administrative fine.

290 (3) The agency may impose an administrative fine for a

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291 violation that is not designated as a class I, class II, class  
292 III, or class IV violation. Unless otherwise specified by law,  
293 the amount of the fine may not exceed \$500 for each violation.  
294 Unclassified violations include:

295 (f) Violating the parental consent requirements of s.  
296 1014.06.

297 Section 9. Paragraph (pp) is added to subsection (1) of  
298 section 456.072, Florida Statutes, to read:

299 456.072 Grounds for discipline; penalties; enforcement.—

300 (1) The following acts shall constitute grounds for which  
301 the disciplinary actions specified in subsection (2) may be  
302 taken:

303 (pp) Failure to comply with the parental consent  
304 requirements of s. 1014.06.

305 Section 10. This act shall take effect July 1, 2020.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Appropriations Subcommittee on  
Education, *Chair*  
Appropriations  
Education  
Ethics and Elections  
Finance and Tax  
Judiciary  
Rules

JOINT COMMITTEE:  
Joint Select Committee on Collective Bargaining

SENATOR KELLI STARGEL  
22nd District

February 20, 2020

The Honorable Lizbeth Benacquisto  
Senate Committee on Rules, Chair  
404 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Benacquisto:

I respectfully request that SB 1634, related to *Parental Rights*, be placed on the Rules meeting agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Kelli Stargel  
State Senator, District 22

Cc: John B. Phelps/Staff Director  
Cynthia Futch/AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
- 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

BILL GALVANO  
President of the Senate

DAVID SIMMONS  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/26/2020  
Meeting Date

1634  
Bill Number (if applicable)

957918  
Amendment Barcode (if applicable)

Topic Parental Rights

Name Richard Osborne

Job Title \_\_\_\_\_

Address Spencer Ct  
Street

Phone \_\_\_\_\_

Ft Walton BCH FL 32547  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

**Waive Speaking:**  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2-21-20

Meeting Date

1634

Bill Number (if applicable)

957918

Amendment Barcode (if applicable)

Topic Vallie Osborne

Name Parental Rights

Job Title \_\_\_\_\_

Address 1 Spencer Ct

Street

Phone \_\_\_\_\_

Ft. Walton Beh

City

State

FL 32847

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

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2/26/20  
Meeting Date

1634  
Bill Number (if applicable)  
957918  
Amendment Barcode (if applicable)

Topic Parents Bill of Rights

Name Patti Sullivan

Job Title \_\_\_\_\_

Address 187 Mabry St  
Street  
Sebastian FL 32958  
City State Zip

Phone 782 913 2375

Email pattisullivan77@gmail.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing parental Rights.org Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

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2/26/2020 Meeting Date

SB 1634 Bill Number (if applicable)

#957918 Amendment Barcode (if applicable)

Topic Parents Rights

Name Lacey Love

Job Title

Address 1511 Melvin St Street

Phone 850-345-0018

Tallahassee FL 32301 City State Zip

Email laacey@lovejustworks.com

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against (The Chair will read this information into the record.)

Representing Florida Coalition For Transgender Liberation

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] 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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2/26/2020 Meeting Date

SB 1634 Bill Number (if applicable)

#957918 Amendment Barcode (if applicable)

Topic Parents Rights

Name Reverend Joe Parramore

Job Title Pastor

Address 6099 Pat Thomas Pkwy Street

Phone 850-570-0584

Owney FL 32351 City State Zip

Email rev.joe.parramore@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against (The Chair will read this information into the record.)

Representing

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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2/26/20

Meeting Date

SB1634

Bill Number (if applicable)

957918

Amendment Barcode (if applicable)

Topic Parental Rights

Name Jon Harris Maurer

Job Title Public Policy Director

Address 201 E Park Ave Ste 200

Street

Phone 850-681-0980

Tallahassee

City

FL

State

32301

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Equality Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

26 Feb 2020  
Meeting Date

SB 1634  
Bill Number (if applicable)  
957918  
Amendment Barcode (if applicable)

Topic Parental Rights

Name Melina Rayna Svanhild Farley Barratt

Job Title Legislative Director

Address 8689 SE 69 Ter  
Street

Phone 352-226-7477

Trenton FL 32693  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FL NOW

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
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(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

26 Feb 2020

Meeting Date

SB 1634

Bill Number (if applicable)

888 014

Amendment Barcode (if applicable)

Topic Parental Rights

Name Melina Rayna Svanhild Forley Barratt

Job Title Self

Address 8689 SE 69 Ter

Street

Phone 352-226-7477

Trenton

City

FL

State

32693

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/26/20  
Meeting Date

SB1634  
Bill Number (if applicable)

396696  
Amendment Barcode (if applicable)

Topic Parental Rights

Name Jon Harris maurer

Job Title Public Policy Director

Address 201 E Park Ave Ste. 200  
Street

Phone 850-681-0980

Tallahassee FL 32301  
City State Zip

Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Equality Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2-26-20  
Meeting Date

11034  
Bill Number (if applicable)

Topic Parental Rights

396096  
Amendment Barcode (if applicable)

Name Vallie Osborne

Job Title \_\_\_\_\_

Address 1 Spencer Ct Phone \_\_\_\_\_  
Street

Ft. Walton Bch FL 32547 Email \_\_\_\_\_  
City State Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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26 Feb 2020  
Meeting Date

SB 1634  
Bill Number (if applicable)

396696  
Amendment Barcode (if applicable)

Topic Parental Rights

Name Melina Rayna Sranhild Farley Barratt

Job Title Legislative Director

Address 8689 SE 69 Ter  
Street

Phone 352-226-7477

Trenton FL 32693  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FL NOW

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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2/26/2020  
Meeting Date

SB 1634  
Bill Number (if applicable)

#396696  
Amendment Barcode (if applicable)

Topic Parents Rights

Name Reverend Joe Parramore

Job Title PASTOR

Address 6099 Pat Thomas Pkwy  
Street

Phone 850-570-0584

Quincy FL 32357  
City State Zip

Email revjoe.parramore@gmail.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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2/26/2020  
Meeting Date

SB 1634  
Bill Number (if applicable)

# 396696  
Amendment Barcode (if applicable)

Topic Parents Rights

Name Lacey Love

Job Title \_\_\_\_\_

Address 1511 Melvin St.  
Street

Phone 850-345-0018

Tallahassee FL 32301  
City State Zip

Email lacey@lovejustworks.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Coalition for Transgender Liberation

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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2/26/20

Meeting Date

1634

Bill Number (if applicable)

396696

Amendment Barcode (if applicable)

Topic Parents Bill of Rights

Name Patti Sullivan

Job Title

Address 187 Mabry St

Street

Phone 772 913-2375

Sebastian FL 32958

City

State

Zip

Email patti.sullivan77@gmail.com

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [X] Against (The Chair will read this information into the record.)

Representing Parental Rights.org Florida

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: SB 1272

INTRODUCER: Senators Montford and Albritton

SUBJECT: Statewide Emergency Shelter Task Force

DATE: February 24, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<b>Favorable</b>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
3.	<u>Proctor</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

---

## I. Summary:

SB 1272 creates a 7-member task force within the Department of Management Services. The Statewide Emergency Shelter Task Force (Task Force) is tasked with making recommendations to the Governor and the Legislature regarding the establishment and operation of state-designated emergency shelters. The recommendations must include, but are not limited to, a review of the local, state, and federal activities organized, planned, and executed at emergency shelters during the past 10 years with a focus on a review of all resources (including financial) and a quantification of expenditures.

The Task Force must provide recommendations regarding the establishment and operation of state-designated emergency shelters to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 15, 2020.

The bill provides for the termination of the Task Force on May 15, 2021.

The Department of Management Services will experience an indeterminate negative fiscal impact as the agency responsible for the reimbursement of travel expenses and other administrative matters.

The bill takes effect July 1, 2020.

## II. Present Situation:

### Task Force Requirements under Section 20.03, Florida Statutes

Section 20.03(8), F.S., defines “task force” to mean an “advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution

or policy alternative related to that problem.” This provision specifies that the existence of the task force terminates upon the completion of its assignment. Further, members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation and are authorized to receive only per diem and reimbursement for travel expenses.<sup>1</sup>

### **Public Shelters**

The Florida Legislature has declared its intent that the State not have a deficit of safe public hurricane evacuation shelter space in any region of the State.<sup>2</sup> The Division of Emergency Management (division), established in the Executive Office of the Governor, serves as the state’s emergency management agency<sup>3</sup> and is directed by the State Emergency Management Act<sup>4</sup> to oversee and manage emergency preparedness, response, recovery, and mitigation programs in Florida.

The division must administer a program for surveying existing public and private buildings, with the owner’s written agreement, to identify which facilities are appropriately designed and located to serve as shelters in the event of an emergency. The state university boards of trustees, district school boards, community college boards of trustees, and the Department of Education are responsible for coordinating and implementing the survey of public schools, universities, and community colleges with the division or the local emergency management agency.<sup>5</sup>

Annually, the Division must provide to the President of the Senate, the Speaker of the House of Representatives, and the Governor a list of facilities recommended to be retrofitted using state funds.<sup>6</sup> State Funds are to be maximized and targeted to regional planning council regions with hurricane evacuation shelter deficits.<sup>7</sup> The owner or lessee of a public hurricane evacuation shelter that is included on the list of facilities recommended for retrofitting is not required to perform any recommended improvements<sup>8</sup>

Additionally, by January 31 of each even-numbered year, the division must prepare and submit a statewide emergency shelter plan<sup>9</sup> (the Plan) to the Governor and Cabinet for approval.<sup>10</sup> The plan must identify the general location and square footage of special needs shelters, by regional planning council region, during the next five years.<sup>11</sup> The plan must also include information on the availability of shelters that accept pets.<sup>12</sup> The Department of Health is required to assist the division in determining the estimated need for special needs shelter space and the adequacy of

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<sup>1</sup> Section 20.052(2)(d), F.S.

<sup>2</sup> Section 252.385(1), F.S.

<sup>3</sup> Section 14.2016, F.S.

<sup>4</sup> Section 252.31, F.S., through s. 252.60, F.S., are known as the State Emergency Management Act. Section 252.31, F.S.

<sup>5</sup> Section 252.385(2)(a), F.S.

<sup>6</sup> Section 252.385(3), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 2018 Statewide Emergency Shelter Plan, DIVISION OF EMERGENCY MANAGEMENT, available at <https://www.floridadisaster.org/globalassets/dem/response/sesp/2018/2018-sesp-entire-document.pdf> (last visited January 29, 2020).

<sup>10</sup> Section 252.385(2)(b), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

facilities to meet the needs of persons with special needs based on information from the registries of persons with special needs and other information.<sup>13</sup>

Public facilities, including schools, post-secondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or nursing homes, which are suitable for use as public hurricane evacuation shelters must be made available at the request of the local emergency management agencies, who also must coordinate with these entities to ensure that designated facilities are ready to activate prior to a specific hurricane or disaster. Local emergency management agencies must also coordinate with the appropriate school board, university, community college, state agency, or local governing board when requesting the use of such public facilities as public hurricane evacuation shelters.<sup>14</sup>

The Department of Management Services (DMS) is required to incorporate provisions for the use of suitable leased public facilities as public hurricane evacuation shelters into lease agreements for state agencies. Suitable leased public facilities include leased public facilities that are solely occupied by state agencies and have at least 2,000 square feet of net floor area in a single room or in a combination of rooms having a minimum of 400 square feet in each room. The net square footage of floor area must be determined by subtracting from the gross square footage the square footage of spaces such as mechanical and electrical rooms, storage rooms, open corridors, restrooms, kitchens, science or computer laboratories, shop or mechanical areas, administrative offices, records vaults, and crawl spaces.<sup>15</sup>

The DMS must, in consultation with local and state emergency management agencies, assess DMS facilities to identify the extent to which each facility has public hurricane evacuation shelter space. The DMS must submit proposed facility retrofit projects that incorporate hurricane protection enhancements to the division for assessment.<sup>16</sup>

The DMS is required to include in the annual state facilities inventory report required under ss. 216.015-216.016, F.S., a separate list of state-owned facilities, including, but not limited to, meeting halls, auditoriums, conference centers, and training centers that have unoccupied space suitable for use as an emergency shelter during a storm or other catastrophic event. Facilities must be listed by the county and municipality where the facility is located and the list must be updated by May 31 of each year.<sup>17</sup>

The division is required to prepare a state comprehensive emergency management plan (CEMP) that must be integrated into, and coordinated with, the emergency management plans of the Federal Government.<sup>18</sup> The CEMP<sup>19</sup> must be submitted to the President of the Senate, the

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<sup>13</sup> *Id.*

<sup>14</sup> Section 252.385(4)(a), F.S.

<sup>15</sup> Section 252.385(4)(b), F.S.

<sup>16</sup> Section 252.385(4)(c), F.S.

<sup>17</sup> Section 252.385(4)(d), F.S.

<sup>18</sup> Section 252.35(2)(a), F.S.; *see also* s. 1013.372, F.S.

<sup>19</sup> Rule 27P-2.002, F.A.C., incorporates the CEMP by reference; *See* Comprehensive Emergency Management Plan, Division of Emergency Management, available at <https://www.floridadisaster.org/globalassets/importedpdfs/2014-state-cemp-basic-plan.pdf> (last visited January 29, 2020).

Speaker of the House of Representatives, and the Governor on February 1 of every even-numbered year.<sup>20</sup> The CEMP must be operations oriented and:

- Include an evacuation component that includes specific regional and interregional planning provisions and promotes intergovernmental coordination of activities.
- Include a shelter component that includes specific regional and interregional planning provisions and promotes coordination of shelter activities between the public, private, and nonprofit sectors.<sup>21</sup>
- Include a postdisaster response and recovery component that includes specific regional and interregional planning provisions and promotes intergovernmental coordination of postdisaster response and recovery activities.
- Include provisions addressing aspects of preparedness, response, recovery, and mitigation as determined necessary by the division.
- Address the need for coordinated and expeditious deployment of state resources, including the Florida National Guard.
- Establish a system of communications and warnings.
- Establish guidelines and schedules for annual exercises that evaluate the ability of the state and its political subdivisions to respond to minor, major, and catastrophic disasters and support local emergency management agencies.
- Assign lead and support responsibilities to state agencies and personnel for emergency support functions and other support activities.

### **Federal Public Assistance for Emergency Shelters**

The Federal Emergency Management Agency (FEMA) provides Public Assistance (PA) funding to State, Territorial, Tribal, and local government Applicants for costs related to emergency sheltering for survivors. Typically, such sheltering occurs in facilities with large open spaces, such as schools, churches, community centers, armories, or other similar facilities. FEMA refers to these shelters as congregate shelters.<sup>22</sup>

Generally, FEMA does not provide PA funding for emergency sheltering in non-congregate environments, which are locations where each individual or household has living space that offers some level of privacy (e.g., hotels, motels, casinos, dormitories, retreat camps, etc.).<sup>23</sup> In limited circumstances, such as when congregate shelters are not available or sufficient, FEMA may reimburse costs related to emergency sheltering provided in non-congregate environments. FEMA's Assistant Administrator for Recovery has the authority to approve this policy exception. The applicant must submit a request for PA funding for costs related to emergency,

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<sup>20</sup> Section 252.35(2)(a), F.S.

<sup>21</sup> This component must, at a minimum: contain strategies to ensure the availability of adequate public shelter space in each region of the state; establish strategies for refuge-of-last-resort programs; provide strategies to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel; provide for a postdisaster communications system for public shelters; establish model shelter guidelines for operations, registration, inventory, power generation capability, information management, and staffing; and set forth policy guidance for sheltering people with special needs. Section 252.35(2)(a)2., F.S.

<sup>22</sup> Federal Emergency Management Agency, *Public Assistance Program and Policy Guide*(FP 104-009-2 / April 2018), available at [https://www.fema.gov/media-library-data/1525468328389-4a038bbef9081cd7dfe7538e7751aa9c/PAPPG\\_3.1\\_508\\_FINAL\\_5-4-2018.pdf](https://www.fema.gov/media-library-data/1525468328389-4a038bbef9081cd7dfe7538e7751aa9c/PAPPG_3.1_508_FINAL_5-4-2018.pdf) (last visited February 12, 2020).

<sup>23</sup> *Id.* at 66.

non-congregate sheltering and obtain FEMA approval prior to sheltering survivors in non-congregate facilities.<sup>24</sup>

FEMA provides for the reimbursement of costs (all or part, depending on the length of time after the event and the FEMA Disaster Declaration<sup>25</sup>) associated with the operation of a shelter facility and the cleaning and restoration of a shelter facility to pre-congregate shelter conditions.<sup>26</sup>

Eligible costs related to sheltering include, but are not limited to, the following<sup>27</sup>:

- Facility lease or rent, including space for food preparation;
- Utilities such as power, water, and telephone;
- Minor facility modifications if necessary to make the facility habitable, compliant with the Americans with Disabilities Act, functional as a child care facility, or functional as an animal shelter;
- Restoration to return the facility to its condition prior to use;
- Generator costs; and
- Secure storage space for medical supplies.<sup>28</sup>

### III. Effect of Proposed Changes:

The bill creates the Statewide Emergency Shelter Task Force to make recommendations to the Governor and the Legislature regarding the establishment and operation of state-designated emergency shelters. The recommendations must include, but are not limited to, a review of the local, state, and federal activities organized, planned, and executed at emergency shelters during the past ten years, with a specific focus on the following:

- A review of all resources, including financial resources, provided in the designation and operation of emergency shelters, and whether the process used to designate and operate emergency shelters was effective in the preparation, operation, and cleanup of such shelters; and
- A quantification of any expenditures for the operation and cleanup of emergency shelters, including repair expenditures for any damage caused by the emergency shelter's occupation which have been less than the actual costs of completing such tasks; the governmental entity that was responsible for paying such uncovered costs; and whether the deficit was due to a lack of resources or a local, state, or federal policy.

The Task Force is established adjunct to the DMS.

The Task Force is composed of:

- One member representing state facilities, who shall serve as chair, appointed by the secretary of the Department of Management Services.
- One public school superintendent, appointed by the Commissioner of Education.

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<sup>24</sup> *Id.*

<sup>25</sup> 44 C.F.R. Part §206, Subpart B., available at <https://www.ecfr.gov/cgi-bin/text-idx?SID=5a67508b6441bcdafc43c537b610741c&mc=true&node=sp44.1.206.b&rgn=div6> (last visited January 30, 2020).

<sup>26</sup> Federal Emergency Management Agency, *FEMA Disaster Assistance Policy*, Disaster Assistance Policy DAP9523.15 at Page 4 of 5, available at <https://www.fema.gov/pdf/government/grant/pa/policy.pdf> (last visited January 30, 2020).

<sup>27</sup> Sheltering and caring for household pets is only eligible while the pet owner is in an emergency shelter. *See Supra* note 22 at 67.

<sup>28</sup> *Id.*

- One member representing Florida College System institutions and state universities, appointed by the Chancellor of the State University System.
- One member representing charter schools, appointed by the Commissioner of Education.
- One member representing independent postsecondary institutions, appointed by the Commissioner of Education.
- One member representing emergency response agencies, appointed by the director of the Division of Emergency Management.
- One member representing facilities constructed with the assistance of state funds, appointed by the Governor.

Members serve at the pleasure of their appointing authority. Any vacancy must be filled in the same manner as the original appointment. A member of the Legislature or a registered legislative or executive branch lobbyist may not be appointed to the Task Force. In accordance with s. 20.052(4)(d), F.S., members shall serve without compensation but are entitled to reimbursement of travel and per diem expenses as provided in s. 112.061, F.S., in the performance of their duties and responsibilities under this section.

The Task Force must report its recommendations regarding the establishment and operation of state-designated emergency shelters to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 15, 2020.

The Task Force expires on May 15, 2021.

The bill provides an effective date of July 1, 2020.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The DMS may incur a minor amount of travel and other administrative expenses as the Task Force is housed within the DMS.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates an undesignated section of the Florida Statutes.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

## B. Amendments:

None.

By Senator Montford

3-01161B-20

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A bill to be entitled

An act relating to the Statewide Emergency Shelter Task Force; establishing the task force adjunct to the Department of Management Services; specifying the task force's purpose; providing for the membership of the task force; providing requirements and restrictions for members of the task force; authorizing reimbursement for per diem and travel expenses; requiring the task force to report recommendations to the Governor and the Legislature by a specified date; providing for expiration; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The Statewide Emergency Shelter Task Force, a task force as defined in s. 20.03(8), Florida Statutes, is established adjunct to the Department of Management Services. The purpose of the task force is to make recommendations to the Governor and the Legislature regarding the establishment and operation of state-designated emergency shelters. The recommendations must include, but are not limited to, a review of the local, state, and federal activities organized, planned, and executed at emergency shelters during the past 10 years, with a specific focus on the following:

(a) A review of all resources, including financial resources, provided in the designation and operation of emergency shelters, and whether the process used to designate and operate emergency shelters was effective in the preparation, operation, and cleanup of such shelters; and

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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(b) A quantification of any expenditures for the operation and cleanup of emergency shelters, including repair expenditures for any damage caused by the emergency shelter's occupation which have been less than the actual costs of completing such tasks; the governmental entity that was responsible for paying such uncovered costs; and whether the deficit was due to a lack of resources or a local, state, or federal policy.

(2) The task force is composed of the following members:

(a) One member representing state facilities, who shall serve as chair, appointed by the secretary of the Department of Management Services.

(b) One public school superintendent, appointed by the Commissioner of Education.

(c) One member representing Florida College System institutions and state universities, appointed by the Chancellor of the State University System.

(d) One member representing charter schools, appointed by the Commissioner of Education.

(e) One member representing independent postsecondary institutions, appointed by the Commissioner of Education.

(f) One member representing emergency response agencies, appointed by the director of the Division of Emergency Management.

(g) One member representing facilities constructed with the assistance of state funds, appointed by the Governor.

(3) Members shall serve at the pleasure of their appointing authority. Any vacancy must be filled in the same manner as the original appointment. A member of the Legislature or a registered legislative or executive branch lobbyist may not be

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59 appointed to the task force. In accordance with s. 20.052(4)(d),  
60 Florida Statutes, members shall serve without compensation but  
61 are entitled to reimbursement of travel and per diem expenses as  
62 provided in s. 112.061, Florida Statutes, in the performance of  
63 their duties and responsibilities under this section.

64 (4) The task force shall report its recommendations  
65 regarding the establishment and operation of state-designated  
66 emergency shelters to the Governor, the President of the Senate,  
67 and the Speaker of the House of Representatives by December 15,  
68 2020.

69 (5) This section expires May 15, 2021.

70 Section 2. This act shall take effect July 1, 2020.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1876

INTRODUCER: Innovation, Industry, and Technology Committee; Agriculture Committee; and Senator Montford

SUBJECT: State Hemp Program

DATE: February 24, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Becker</u>	<u>Becker</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	<u>Fav/CS</u>
3.	<u>Becker</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1876 makes changes to the state hemp program. Specifically, the bill:

- Includes hemp extract in the definition of “food” in the Florida Food Safety Act;
- Requires persons who operate minor food outlets (which sell only commercially prepackaged food that is not potentially hazardous, or not time or temperature controlled for safety, if the shelf space for those items does not exceed 12 total linear feet) that sell hemp extract to obtain a food permit from the Department of Agriculture and Consumer Services (department);
- Includes a substance or compound that is intended for inhalation in the definition of “hemp extract;”
- Exempts synthetic cannabidiol (CBD) oil and seeds and seed-derived ingredients that are generally recognized as safe by the United States Food and Drug Administration from the definition of “hemp extract;”
- Provides that, if the plan submitted by the department to the Secretary of the U.S. Department of Agriculture (USDA) is rejected and the plan may be revised without statutory changes, the department must consult with the Administration Commission<sup>1</sup> and submit an amended plan to the USDA.

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<sup>1</sup> Section 14.202, F.S. The Administration Commission is part of the Executive Office of the Governor and is composed of the Governor and Cabinet (the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, as specified in s. 4, Art. IV of the State Constitution).

- Modifies how delta-9-tetrahydrocannabinol (THC) is measured in hemp extract;
- Clarifies that a hemp extract container must contain the number of milligrams of each cannabinoid per serving;
- Repeals the requirement that a package of hemp extract must contain a statement that the product's total THC concentration does not exceed 0.3 percent on a dry-weight basis.
- Provides that hemp extract that does not meet certain requirements is considered adulterated or misbranded;
- Prohibits the sale of products that are intended for inhalation and made from hemp extract to a person who is under 21 years of age;
- Provides that the report to the department's monthly report to the USDA must include total acreage and the amount of hemp planted, harvested, and if applicable, destroyed by each license;
- Allows the department to contract with entities to provide sample collection, laboratory testing, and disposal services;
- Provides a process for the department to notify a licensee when hemp is produced with a THC level that exceeds 0.3 percent as well as removal and destruction procedures. Damages may not be awarded for the destruction of the plants;
- Requires that the department's rules for disposal of hemp plants must be in accordance with the federal Controlled Substances Act and regulations of the Drug Enforcement Administration.
- Provides staggered initial appointment terms for members of the Industrial Hemp Council (council);
- Provides that the chair of the council serves for a one-year term; and
- Requires the department to submit a report to the Legislature by December 1, 2020 providing recommendations for initial license and license renewal fees, including a separate cost breakdown if the fees do not cover cost of inspections and testing.

The bill takes effect upon becoming law.

## II. Present Situation:

### Industrial Hemp

Industrial hemp is a *Cannabis sativa* plant (cannabis) that has been cultivated for approximately 10,000 years as a fiber and grain crop. It is used for fiber, building materials, forages (animal feed), and pain relief as a topical oil.<sup>2</sup>

### Cannabis

Cannabis is a Schedule I controlled substance.<sup>3</sup> It is a felony of the third degree<sup>4</sup> to sell, manufacture, deliver, or possess with intent to sell, manufacture, or deliver, cannabis in Florida.<sup>5</sup>

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<sup>2</sup> See University of Florida, *UF/IFAS Industrial Hemp Pilot Project* at: <https://programs.ifas.ufl.edu/hemp/> (last visited February 10, 2020).

<sup>3</sup> Section 893.03(1)(c)7., F.S.

<sup>4</sup> Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

<sup>5</sup> Section 893.13(1)(a)2., F.S.

As a controlled substance in ch. 893, F.S., “cannabis” is defined to mean: all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include “marijuana,” as defined in s. 381.986, F.S., if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986, F.S., [the Compassionate Medical Cannabis Act of 2014], hemp as defined in s. 581.217, F.S., [the state hemp program], or industrial hemp as defined in s. 1004.4473, F.S., [industrial hemp pilot projects].<sup>6</sup>

### Medical Marijuana

On November 4, 2016, Amendment 2 was approved by the electors and is codified in Article X, section 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 medically using marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- Medical marijuana treatment centers (MMTCs), their agents, and employees for actions or conduct under the amendment and in compliance with rules promulgated by the Florida Department of Health.

Subsequently, the Legislature passed SB 8-A in Special Session A of 2017.<sup>7</sup> The bill revised the Compassionate Medical Cannabis Act of 2014<sup>8</sup> in s. 381.986, F.S., to implement Article X, section 29 of the Florida Constitution.

The term medical marijuana includes two distinct forms of the plant genus *Cannabis*:

- Marijuana without any limitation or restriction on the percentage of THC;<sup>9</sup> and
- “Low-THC cannabis” in which the percentage of THC is limited to 0.8 percent or less and has more than 10 percent of cannabidiol<sup>10</sup> weight for weight.<sup>11</sup>

The Coalition for Medical Marijuana Research and Education located at the H. Lee Moffitt Cancer Center and Research Institute, Inc., is authorized to conduct medical marijuana research and education.<sup>12</sup>

A MMTC and a qualified patient or caregiver are specifically exempt from the criminal prohibition against the possession of cannabis.<sup>13</sup>

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<sup>6</sup> Section 893.02(3), F.S.

<sup>7</sup> Chapter 2017-232, Laws of Fla.

<sup>8</sup> Chapter 2014-157, Laws of Fla.

<sup>9</sup> THC, or tetrahydrocannabinol, is the main active ingredient in cannabis and is responsible for most of the psychological effects of cannabis.

<sup>10</sup> Cannabidiol (CBD) is a chemical compound, known as a cannabinoid, found in cannabis. CBD does not have the same psychoactivity as THC. See Michael J Breus, *Despite What You May Think... CBD Is Not Weed* (Sept. 20, 2018), Psychology Today, available at: <https://www.psychologytoday.com/us/blog/sleep-newzzz/201809/despite-what-you-may-think-cbd-is-not-weed> (last visited February 10, 2020).

<sup>11</sup> See ss. 381.986(1)(e) and (f), F.S.

<sup>12</sup> Section 1004.4351, F.S.

<sup>13</sup> See s. 381.986(14), F.S.

## 2014 Federal Farm Bill and State Industrial Hemp Pilot Programs

The Agricultural Improvement Act of 2014 (2014 Farm Bill) defined industrial hemp and allowed state departments of agriculture or universities to grow and produce industrial hemp as part of research or pilot programs. Specifically, the law allowed universities and state departments of agriculture to grow or cultivate industrial hemp if:

- The industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and
- The growing or cultivating of industrial hemp is allowed under the laws of the state in which such institution of higher education or state department of agriculture is located and such research occurs.<sup>14</sup>

The 2014 Farm Bill defines “industrial hemp” to mean:

...the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.<sup>15</sup>

Section 1004.4473, F.S., authorizes the Florida Department of Agriculture and Consumer Services (department) to oversee the development of industrial hemp pilot projects for the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida, Florida Agricultural and Mechanical University, any land grant university in the state that has a college of agriculture, and any Florida College System institution or state university that has an established agriculture, engineering, or pharmacy program.<sup>16</sup> The purpose of the pilot projects is to cultivate, process, test, research, create, and market safe and effective commercial applications for industrial hemp in the agricultural sector in this state. The department has adopted a rule addressing safety, compliance, and accountability and other concerns.<sup>17</sup>

## 2018 Federal Farm Bill

In the 2018 Farm Bill, the U.S. Congress legalized industrial hemp as an agricultural product by removing hemp’s classification as a controlled substance.<sup>18</sup> The 2018 Farm Bill defines “hemp” to mean:

...the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9

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<sup>14</sup> Agricultural Improvement Act of 2014, Pub. L. No. 113-79, s. 7606, 128 Stat. 912 (2014) (codified at 7 U.S.C. s. 5940).

<sup>15</sup> *Id.*

<sup>16</sup> Section 1004.4473(2)(a), F.S.

<sup>17</sup> Fla. Admin. Code R. 5B-57.013 (2018).

<sup>18</sup> Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 12619, 132 Stat. 409 (2018) (codified at 21 U.S.C 802(16)).

tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.<sup>19</sup>

The 2018 Farm Bill allows a state department of agriculture or an Indian tribe to submit a plan to the United States Secretary of Agriculture and apply for primary regulatory authority over the production of hemp in their state or tribal territory. A state or tribal plan must include:

- A procedure for tracking land upon which hemp will be produced;
- Testing methods for determining THC concentration levels of hemp;
- Methods for effective disposal of noncompliant products;
- Enforcement procedures;
- Inspection procedures; and
- Certification procedures for the persons authorized to produce hemp producers, test hemp products, inspect hemp producers, and enforce the provisions of the state or tribal plan.<sup>20</sup>

### **State Hemp Program**

The state hemp program was created within the department to regulate the cultivation of hemp in Florida.<sup>21</sup>

Section 581.217(3)(d), F.S., defines the term “hemp” to mean:

...the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Section 581.217(3)(e), F.S., defines the term “hemp extract” to mean “a substance or compound intended for ingestion that is derived from or contains hemp and that does not contain other controlled substances.”

The department is required to seek federal approval of the state plan for the regulation of the cultivation of hemp with the United States Secretary of Agriculture (USDA) in accordance with the Agricultural Improvement Act of 2018 within 30 days of adopting rules.<sup>22</sup> A license is required to cultivate hemp<sup>23</sup> and to obtain a license a person must apply to the department and submit a full set of fingerprints.<sup>24</sup> A person seeking to cultivate hemp must provide the

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<sup>19</sup> Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 10113, 132 Stat. 409 (2018) (codified at 7 U.S.C. s. 1639o).

<sup>20</sup> Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 10113, 132 Stat. 409 (2018) (codified at 7 U.S.C. s. 1639p).

<sup>21</sup> See s 581.217, F.S.

<sup>22</sup> Section 581.217(4), F.S.

<sup>23</sup> Section 581.217(5)(a), F.S.

<sup>24</sup> Section 581.217(5)(b), F.S.

department with a legal land description and GPS coordinates of where the hemp will be cultivated.<sup>25</sup> The department must deny an application under certain circumstances.<sup>26</sup>

### **Florida Seed Law**

The duty to administer the Florida Seed Law<sup>27</sup> and enforce its provisions and requirements is vested in the department.<sup>28</sup> The Florida Seed Law is intended as a comprehensive and exclusive regulation of seed. The department must sample, inspect, analyze, and test agricultural, vegetable, flower, tree, or shrub seed transported, sold, offered or exposed for sale, or distributed in the state for sowing or planting purposes.<sup>29</sup>

### **Generally Recognized as Safe**

Under sections 201(s) and 409 of the Federal Food, Drug and Cosmetic Act, any substance that is intentionally added to food is a food additive that is subject to premarket review and approval by the U.S. Food and Drug Administration (FDA). A substance may not be offered for sale as food unless the substance is generally recognized, among qualified experts, as having been adequately shown to be safe under the conditions of its intended use, or unless the use of the substance is otherwise excepted from the definition of a food additive.<sup>30</sup> The FDA has evaluated three products by Fresh Hemp Foods, Ltd. and determined that hulled hemp seed, hemp seed protein powder, and hemp seed oil were generally recognized as safe.<sup>31</sup> This applies to products from other companies if they are manufactured in a way that is consistent with the evaluated products and the products meet the listed specifications.<sup>32</sup>

### **Hemp Extract**

Hemp extract is a substance or compound intended for ingestion that is derived from or contains hemp and that does not contain controlled substances.<sup>33</sup> Hemp extract may only be sold in this state if the product has a certificate of analysis prepared by an independent testing laboratory and is distributed or sold in packaging that meets certain requirements.<sup>34</sup>

## **III. Effect of Proposed Changes:**

CS/SB 1876 makes a number of changes to the state hemp program.

The bill amends s. 500.03(1)(n), F.S., to include hemp extract in the definition of “food” in the Florida Food Safety Act.

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<sup>25</sup> Section 581.217(5)(d), F.S.

<sup>26</sup> Section 581.217(5)(e), F.S.

<sup>27</sup> Chapter 578, F.S.

<sup>28</sup> Section 578.11(1), F.S.

<sup>29</sup> Section 578.11(1), F.S.

<sup>30</sup> See U.S. Food & Drug Administration *Generally Recognized as Safe* at: <https://www.fda.gov/food/food-ingredients-packaging/generally-recognized-safe-gras> (last visited February 10, 2020).

<sup>31</sup> See *FDA Responds to Three GRAS Notices for Hemp-Seed Derived Ingredients for Use in Human Food* at: <https://www.fda.gov/food/generally-recognized-safe-gras/about-gras-notification-program> (last visited February 10, 2020).

<sup>32</sup> *Id.*

<sup>33</sup> Section 581.217(3)(e), F.S.

<sup>34</sup> Section 581.217(7), F.S.

The bill amends s. 500.12(1)1., F.S., to require persons who operate minor food outlets<sup>35</sup> that sell hemp extract to obtain a food permit from the department.

The definition of the term “hemp extract” in s. 581.217(3)(e), F.S., is amended by the bill to include the substances or compounds intended for inhalation. Current law limits the definition of the term to products intended for consumption.

Section 581.217(3)(e), F.S., is also amended to exclude synthetic CBD and seeds and seed-derived ingredients that are generally recognized as safe by the FDA from the definition of “hemp extract.”

The bill amends s. 581.217(4), F.S., revises the requirements for the plan the department must submit for the approval of the Secretary of the USDA. The bill provides that, if the plan submitted to the Secretary of the USDA is rejected and the plan may be revised without statutory changes, the department must consult with the Administration Commission<sup>36</sup> and submit an amended plan to the USDA.

The bill removes the requirement in s. 581.217(7), F.S., that hemp extract be tested on a dry-weight basis. It also clarifies that the distribution and labeling requirements in s. 581.217(7), F.S., apply to containers of hemp extract instead of to packaging. The bill requires that a container of hemp extract must contain the number of milligrams of each cannabinoid per serving.

The bill also amends s. 581.217(7), F.S., to repeal the requirement that a package of hemp extract must contain a statement that the products total THC concentration does not exceed 0.3 percent on a dry-weight basis.

The bill provides that hemp extract sold in violation of s. 581.217, F.S. is considered misbranded or adulterated.

The bill prohibits the sale of products that are intended for inhalation and made from hemp extract to a person who is under 21 years of age. However, the bill does not provide a penalty for a violation of this prohibition.

Section 581.217(9), F.S., dealing with the monthly report the department must submit to the USDA, is amended by the bill to require the department to include in the report the total acreage of hemp planted, harvested, and if applicable, disposed of by each licensee.

Section 581.217(11), F.S., is amended by the bill to allow the department to contact with entities to provide sample collection, laboratory testing, and disposal services.

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<sup>35</sup> Section 500.12(1)(a), F.S., exempts the operator of a minor food outlet from the requirement to have food permit issued by the department. A minor food mart sells commercially prepackaged food that is not potentially hazardous and not time or temperature controlled for safety, if the shelf space for those items does not exceed 12 total linear feet and other food is sold by the minor food outlet.

<sup>36</sup> *Supra*, note 1.

The bill requires the department to notify a licensee when hemp is produced with a THC level that exceeds the allowable limit of 0.3 percent. Under the bill, the licensee must remove and destroy the plants that are out of compliance within 10 days of receiving the notice from the department. If the licensee fails to comply, the department must destroy the plants at the expense of the licensee. Damages may not be awarded to the licensee for the destruction of the plants.

The bill amends s. 581.217(12), F.S., dealing with the provisions that the department must include in the rules for the State Hemp Program, to

- Delete the requirement that the department initiate rulemaking by August 1, 2019.
- Require that the department's rules for disposal of hemp plants must be in accordance with the federal Controlled Substances Act and regulations of the Drug Enforcement Administration.

Section 581.217(14), F.S., relating to the Industrial Hemp Council (council), to provide:

- That a function of the council is to provide information to the department.
- That members of the council serve four-year terms.
- Staggered initial appointment terms for members of the council.
- That the chair of the council serves for a one-year term.
- That the department must submit a report to the Legislature by December 1, 2020 with recommendations for initial license and license renewal fees, including a separate cost breakdown if the fees do not cover cost of inspections and testing.

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:**

Small food retailers will now need to obtain a food permit if they sell hemp extract.

**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: 500.03, 500.12, and 581.217.

**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 Innovation, Industry, and Technology on February 17, 2020:**

The CS:

- Deletes from the bill the provision to removing a reference in current law to the Department of Health’s medical marijuana regulations in the definition of the term “contaminants unsafe for human consumption.”
- Provides that, if the plan submitted by the Department of Agriculture and Consumer Services (DACS) to the Secretary of the U.S. Department of Agriculture (USDA) is rejected and the plan may be revised without statutory changes, the DACS must consult with the Administration Commission and submit an amended plan to the USDA.
- Repeals the requirement that a package of hemp extract must contain a statement that the products total THC concentration does not exceed 0.3 percent on a dry-weight basis.
- Requires the DACS to include the total acreage of hemp planted, harvested, and if applicable, disposed of by each licensee in its monthly report to the USDA.
- Deletes the requirement that the DACS initiate rulemaking by August 1, 2019.

- Requires that the DACS's rules disposal of hemp plants must be in accordance with the federal Controlled Substances Act and regulations of the Drug Enforcement Administration.
- Provides that a function of the Industrial Hemp Council (Council) is to provide information to the DACS.
- Provides that members of the council serve four-year terms.
- Provides staggered initial appointment terms for members of the Council.
- Provides that the chair of the council serves for a one-year term.
- Requires the DACS to submit a report to the Legislature by December 1, 2020 providing recommendations for initial license and license renewal fees, including a separate cost breakdown if the fees do not cover cost of inspections and testing.
- Changes the effective date to upon becoming law (instead of on July 1, 2020).

**CS by Agriculture on February 4, 2020:**

- Reverts seed certification requirements back to current law;
- Adds hemp extract to the definition of "food" in the Florida Food Safety Act;
- Requires small food retailers who are normally exempt from a food permit to obtain one if they sell hemp extract.
- Adds products that are inhaled to the definition of "hemp extract" and prohibits those products from being sold to someone under the age of 21;
- Deletes the prohibition on selling products that contain hemp extract to someone under the age of 18;
- Removes synthetic CBD oil from the definition of "hemp extract;" and
- Allows the department to contract for sample collection, laboratory testing, and disposal services.

**B. Amendments:**

None.



492230

LEGISLATIVE ACTION

Senate

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. .  
. .  
. .

House

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The Committee on Rules (Montford) recommended the following:

**Senate Amendment**

Delete line 95

and insert:

for ingestion, containing more than trace amounts of  
cannabidiol, or for inhalation which ~~that~~ is derived from or

By the Committees on Innovation, Industry, and Technology; and  
Agriculture; and Senators Montford and Gibson

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1 A bill to be entitled  
2 An act relating to the state hemp program; amending s.  
3 500.03, F.S.; revising the definition of the term  
4 "food" to include hemp extract for purposes of the  
5 Florida Food Safety Act; amending s. 500.12, F.S.;  
6 providing that a person operating a minor food outlet  
7 that sells hemp extract is not exempt from certain  
8 food permit requirements; amending s. 581.217, F.S.;  
9 redefining the term "hemp extract"; directing the  
10 Department of Agriculture and Consumer Services, in  
11 consultation with the Administration Commission, to  
12 submit an amended plan for the state program to the  
13 United States Secretary of Agriculture under certain  
14 circumstances; providing that hemp extract that does  
15 not meet certain requirements will be considered  
16 adulterated or misbranded; prohibiting the sale of  
17 certain hemp extract products to individuals under a  
18 specified age; revising the contents of the  
19 department's required monthly report to the United  
20 States Secretary of Agriculture; authorizing the  
21 department to contract with entities to provide  
22 certain collection, testing, and disposal services;  
23 providing that such contracts are exempt from  
24 specified provisions; requiring the director of the  
25 Division of Plant Industry to notify a licensee of  
26 certain findings; requiring such licensee or, if the  
27 licensee fails to act within a specified timeframe,  
28 authorizing the director, to remove and destroy  
29 certain plants; requiring that expenses associated

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30 with such removal or destruction be assessed,  
31 collected, and enforced against the licensee;  
32 prohibiting the award of certain damages; requiring  
33 program rules to include specified sampling and  
34 disposal procedures; providing terms for advisory  
35 council members and the council chair; providing  
36 requirements for filling advisory council vacancies;  
37 directing the department to submit a report that  
38 provides recommendations for program fees to the  
39 Legislature by a specified date; providing an  
40 effective date.

41  
42 Be It Enacted by the Legislature of the State of Florida:

43  
44 Section 1. Paragraph (n) of subsection (1) of section  
45 500.03, Florida Statutes, is amended to read:  
46 500.03 Definitions; construction; applicability.—  
47 (1) For the purpose of this chapter, the term:  
48 (n) "Food" includes:  
49 1. Articles used for food or drink for human consumption;  
50 2. Chewing gum;  
51 3. Articles used for components of any such article;  
52 4. Articles for which health claims are made, which claims  
53 are approved by the Secretary of the United States Department of  
54 Health and Human Services and which claims are made in  
55 accordance with s. 343(r) of the federal act, and which are not  
56 considered drugs solely because their labels or labeling contain  
57 health claims; ~~and~~  
58 5. Dietary supplements as defined in 21 U.S.C. s.

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59 321(ff) (1) and (2); and

60 6. Hemp extract as defined in s. 581.217.

61  
62 The term includes any raw, cooked, or processed edible  
63 substance; ice; any beverage; or any ingredient used, intended  
64 for use, or sold for human consumption.

65 Section 2. Paragraph (a) of subsection (1) of section  
66 500.12, Florida Statutes, is amended to read:

67 500.12 Food permits; building permits.—

68 (1)(a) A food permit from the department is required of any  
69 person who operates a food establishment or retail food store,  
70 except:

71 1. Persons operating minor food outlets that sell food,  
72 except hemp extract, that is commercially prepackaged, not  
73 potentially hazardous, and not time or temperature controlled  
74 for safety, if the shelf space for those items does not exceed  
75 12 total linear feet and no other food is sold by the minor food  
76 outlet.

77 2. Persons subject to continuous, onsite federal or state  
78 inspection.

79 3. Persons selling only legumes in the shell, either  
80 parched, roasted, or boiled.

81 4. Persons selling sugar cane or sorghum syrup that has  
82 been boiled and bottled on a premise located within the state.  
83 Such bottles must contain a label listing the producer's name  
84 and street address, all added ingredients, the net weight or  
85 volume of the product, and a statement that reads, "This product  
86 has not been produced in a facility permitted by the Florida  
87 Department of Agriculture and Consumer Services."

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88 Section 3. Paragraph (e) of subsection (3) and subsections  
89 (4), (7), (9), (11), (12), and (14) of section 581.217, Florida  
90 Statutes, are amended, and subsection (15) is added to that  
91 section, to read:

92 581.217 State hemp program.—

93 (3) DEFINITIONS.—As used in this section, the term:

94 (e) "Hemp extract" means a substance or compound intended  
95 for ingestion or inhalation which ~~that~~ is derived from or  
96 contains hemp and which ~~that~~ does not contain other controlled  
97 substances. The term does not include synthetic CBD or seeds or  
98 seed-derived ingredients that are generally recognized as safe  
99 by the United States Food and Drug Administration.

100 (4) FEDERAL APPROVAL.—The department shall seek approval of  
101 the state plan for the regulation of the cultivation of hemp  
102 with the United States Secretary of Agriculture in accordance  
103 with 7 U.S.C. s. 1639p within 30 days after adopting rules. If  
104 the state plan is not approved by the United States Secretary of  
105 Agriculture, the Commissioner of Agriculture, in consultation  
106 with and with final approval from the Administration Commission,  
107 shall develop a recommendation to amend the state plan and  
108 submit the recommendation to the Legislature. If revisions to  
109 the state plan may be made without statutory changes, the  
110 department, in consultation with and with final approval from  
111 the Administration Commission, must submit an amended plan to  
112 the United States Secretary of Agriculture.

113 (7) DISTRIBUTION AND RETAIL SALE OF HEMP EXTRACT.—

114 (a) Hemp extract may only be distributed and sold in the  
115 state if the product:

116 1. ~~(a)~~ Has a certificate of analysis prepared by an

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117 independent testing laboratory that states:

118 ~~a.1.~~ The hemp extract is the product of a batch tested by

119 the independent testing laboratory;

120 ~~b.2.~~ The batch contained a total delta-9-

121 tetrahydrocannabinol concentration that did not exceed 0.3

122 percent ~~on a dry weight basis~~ pursuant to the testing of a

123 random sample of the batch; and

124 ~~c.3.~~ The batch does not contain contaminants unsafe for

125 human consumption.

126 ~~2.(b)~~ Is distributed or sold in a container packaging that

127 includes:

128 ~~a.1.~~ A scannable barcode or quick response code linked to

129 the certificate of analysis of the hemp extract batch by an

130 independent testing laboratory;

131 ~~b.2.~~ The batch number;

132 ~~c.3.~~ The Internet address of a website where batch

133 information may be obtained;

134 ~~d.4.~~ The expiration date; and

135 ~~e.5.~~ The number of milligrams of each marketed cannabinoid

136 per serving hemp extract; and

137 ~~6. A statement that the product contains a total delta-9-~~

138 ~~tetrahydrocannabinol concentration that does not exceed 0.3~~

139 ~~percent on a dry weight basis.~~

140 (b) Hemp extract distributed or sold in violation of this

141 section shall be considered adulterated or misbranded pursuant

142 to chapter 500, chapter 502, or chapter 580.

143 (c) Products that are intended for inhalation and contain

144 hemp extract may not be sold in this state to a person who is

145 under 21 years of age.

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146 (9) DEPARTMENT REPORTING.—The department shall submit

147 monthly to the United States Secretary of Agriculture a report

148 of the locations in the state where hemp is cultivated or has

149 been cultivated within the past 3 calendar years. The report

150 must include the contact information for each licensee and the

151 total acreage of hemp planted, harvested, and, if applicable,

152 disposed of by each licensee.

153 (11) ENFORCEMENT.—

154 (a) The department shall enforce this section.

155 (b) Every state attorney, sheriff, police officer, and

156 other appropriate county or municipal officer shall enforce, or

157 assist any agent of the department in enforcing, this section

158 and rules adopted by the department.

159 (c) The department, or its agent, is authorized to enter

160 any public or private premises during regular business hours in

161 the performance of its duties relating to hemp cultivation.

162 (d) The department shall conduct random inspections, at

163 least annually, of each licensee to ensure that only certified

164 hemp seeds are being used and that hemp is being cultivated in

165 compliance with this section. The department may contract with

166 entities to provide sample collection, laboratory testing, and

167 disposal services to implement this section. The contracts are

168 exempt from chapter 287.

169 (e) If the department finds that *Cannabis sativa L.* was

170 produced with a total delta-9-tetrahydrocannabinol concentration

171 that exceeds 0.3 percent, the director shall notify the licensee

172 of such result. The licensee shall, within 10 days after

173 receiving the notice, cause the removal and destruction of the

174 plants in accordance with methods adopted by the department. If

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175 the licensee refuses or neglects to comply with the terms of the  
 176 notice within 10 days after receiving it, the director or her or  
 177 his authorized representative may, under authority of the  
 178 department, proceed to destroy the plants. The expense of the  
 179 removal or destruction shall be assessed, collected, and  
 180 enforced against the licensee by the department. Damages may not  
 181 be awarded to the licensee for the destruction of the plants  
 182 under this paragraph.

183 (12) RULES.—~~By August 1, 2019,~~ The department, in  
 184 consultation with the Department of Health and the Department of  
 185 Business and Professional Regulation, shall initiate rulemaking  
 186 to administer the state hemp program. The rules must provide  
 187 for:

188 (a) A procedure that uses post-decarboxylation or other  
 189 similarly reliable methods and a measure of uncertainty for  
 190 testing the delta-9-tetrahydrocannabinol concentration of  
 191 cultivated hemp. This procedure must meet the requirements of  
 192 the rules adopted by the United States Department of  
 193 Agriculture.

194 (b) A procedure for the effective disposal of plants,  
 195 whether growing or not, that are cultivated in violation of this  
 196 section or department rules, and products derived from those  
 197 plants. The procedure must provide for the disposal of such  
 198 plants in accordance with the federal Controlled Substances Act  
 199 and regulations of the Drug Enforcement Administration.

200 (14) INDUSTRIAL HEMP ADVISORY COUNCIL.—An Industrial Hemp  
 201 Advisory Council, an advisory council as defined in s. 20.03, is  
 202 established to provide information, advice, and expertise to the  
 203 department with respect to plans, policies, and procedures

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204 applicable to the administration of the state hemp program.

205 (a) The advisory council is adjunct to the department for  
 206 administrative purposes.

207 (b) The advisory council shall be composed of all of the  
 208 following members:

209 1. Two members appointed by the Commissioner of  
 210 Agriculture.

211 2. Two members appointed by the Governor.

212 3. Two members appointed by the President of the Senate.

213 4. Two members appointed by the Speaker of the House of  
 214 Representatives.

215 5. The dean for research of the Institute of Food and  
 216 Agricultural Sciences of the University of Florida or his or her  
 217 designee.

218 6. The president of Florida Agricultural and Mechanical  
 219 University or his or her designee.

220 7. The executive director of the Department of Law  
 221 Enforcement or his or her designee.

222 8. The president of the Florida Sheriffs Association or his  
 223 or her designee.

224 9. The president of the Florida Police Chiefs Association  
 225 or his or her designee.

226 10. The president of the Florida Farm Bureau Federation or  
 227 his or her designee.

228 11. The president of the Florida Fruit and Vegetable  
 229 Association or his or her designee.

230 (c) Each advisory council member shall be appointed to a 4-  
 231 year term, and any vacancy in the membership of the council must  
 232 be filled in the same manner as the original appointment for the

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233 remainder of the unexpired term. For the purpose of achieving  
234 staggered terms, the initial members appointed to the council  
235 shall serve the following terms:

- 236 1. Four years for members appointed by the Governor.
- 237 2. Three years for members appointed by the President of  
238 the Senate or the Speaker of the House of Representatives.
- 239 3. Three years for members appointed by the Commissioner of  
240 Agriculture.
- 241 4. Two years for all other appointed members.

242 (d)(e) The advisory council shall elect by a two-thirds  
243 vote of the members one member to serve as chair of the council.  
244 The chair shall serve for a term of 1 year.

245 (e)(d) A majority of the members of the advisory council  
246 constitutes a quorum.

247 (f)(e) The advisory council shall meet at least once  
248 annually at the call of the chair.

249 (g)(f) Advisory council members shall serve without  
250 compensation and are not entitled to reimbursement for per diem  
251 or travel expenses.

252 (15) FEES.—By December 1, 2020, the department shall submit  
253 a report to the President of the Senate and the Speaker of the  
254 House of Representatives which provides recommendations for  
255 initial license application fees and license renewal fees  
256 sufficient to cover the costs of implementing and administering  
257 this section. If such fees do not cover the costs of inspections  
258 and testing, the department shall include a separate cost  
259 breakdown for any other program fees that the department  
260 recommends and anticipates are necessary.

261 Section 4. This act shall take effect upon becoming a law.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Environment and Natural Resources, *Chair*  
Education, *Vice Chair*  
Agriculture  
Appropriations  
Appropriations Subcommittee on Education  
Rules

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee

### SENATOR BILL MONTFORD

*Minority Leader Pro Tempore*  
3rd District

February 17, 2020

Senator Lizbeth Benacquisto, Chair  
Senate Rules Committee  
400 Senate Office Building  
Tallahassee, Florida 32399-1100

Dear Chair Benacquisto,

I respectfully request that the following bills be placed on the next Rules Committee Agenda.

SB 1876 – A bill relating to State Hemp Program.

Your consideration is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William J. Montford III

WJM:rm

**REPLY TO:**

410 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003  
 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7048

INTRODUCER: Infrastructure and Security Committee

SUBJECT: Public Records/Public Shelter Space

DATE: February 24, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Proctor</u>	<u>Miller</u>		<b>IS Submitted as Committee Bill</b>
1.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Proctor</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

---

## I. Summary:

SB 7048 exempts from public inspection and copying the name, address, and telephone number of a person which are held by an agency providing shelter or assistance to such person during an emergency.

The bill provides that the exemption created under the bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding this exemption should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming a law.

## II. Present Situation:

### Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> The right to inspect or copy applies

---

<sup>1</sup> FLA. CONST. art. I, s. 24(a).

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.<sup>2</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

### **Executive Agency Records – The Public Records Act**

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>5</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>10</sup> The exemption must state

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<sup>2</sup> *Id.*

<sup>3</sup> 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)

<sup>4</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>5</sup> Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.07(1)(a), F.S.

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>12</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>13</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.<sup>14</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>16</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> 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.<sup>19</sup>

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>20</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;<sup>21</sup>

<sup>11</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>12</sup> *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>13</sup> *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>14</sup> *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

<sup>15</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>18</sup> Section 119.15(2)(a) and (b), F.S., 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.

<sup>19</sup> Section 119.15(3), F.S.

<sup>20</sup> Section 119.15(6)(b), F.S.

<sup>21</sup> Section 119.15(6)(b)1., F.S.

- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>22</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

The Act also requires specified questions to be considered during the review process.<sup>24</sup> In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>25</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>26</sup>

### Public Shelters

The Division of Emergency Management (DEM) is established in the Executive Office of the Governor to serve as the state's emergency management agency.<sup>27</sup> The State Emergency Management Act<sup>28</sup> directs DEM to oversee and manage emergency preparedness, response, recovery, and mitigation programs in Florida.

DEM currently manages a program for surveying existing public and private buildings, with the owner's written agreement, to identify which facilities are appropriately designed and located to serve as shelters in the event of an emergency.<sup>29</sup> Public facilities, including schools, post-secondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or nursing homes, which are suitable for use as public hurricane evacuation shelters must be made available at the request of the local emergency management agencies.<sup>30</sup>

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<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

<sup>24</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>25</sup> See generally s. 119.15, F.S.

<sup>26</sup> Section 119.15(7), F.S.

<sup>27</sup> Section 14.2016, F.S.

<sup>28</sup> Section 252.31, F.S., through s. 252.60, F.S., are known as the State Emergency Management Act. Section 252.31, F.S.

<sup>29</sup> Section 252.385(2)(a), F.S.

<sup>30</sup> Section 252.385(4)(a), F.S.

DEM is required to prepare a state comprehensive emergency management plan (CEMP) that must be integrated into, and coordinated with, the emergency management plans of the Federal Government.<sup>31</sup> The CEMP<sup>32</sup> must include a shelter component, the Statewide Emergency Shelter Plan (plan),<sup>33</sup> with specific planning provisions and the CEMP must promote shelter activity coordination between the public, private, and nonprofit sectors.<sup>34</sup> The plan must include the following:

- Contain strategies to ensure the availability of adequate shelter space in each region of the state;
- Establish strategies for refuge-of-last-resort programs;
- Provide strategies to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel;
- Provide for a post disaster communications system for public shelters;
- Establish model shelter guidelines for operations, registration, inventory, power generation capability, information management, and staffing; and
- Set forth policy guidance for sheltering people with special needs.<sup>35</sup>

The plan must be prepared and submitted to the Governor and Cabinet each even-numbered year.<sup>36</sup> The plan, among other requirements, must identify the location and square footage of existing shelters as well as shelters needed in the next five years.<sup>37</sup> The plan must also identify the types of public facilities that should be constructed to comply with emergency-shelter criteria and must recommend an appropriate and available source of funding for the additional cost of constructing emergency shelters within these public facilities.<sup>38</sup>

Public shelters are not required to gather personal information on shelter residents, however, nothing in law prevents the collection of such information. Shelters that collect personal information on their residents may do so to have an accurate accounting of all persons staying within or to locate family members for the purpose of family reunification. While no public record exemption for this information exists, the plan states that shelter staff members should “abide by principles of confidentiality.”<sup>39</sup>

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<sup>31</sup> Section 252.35(2)(a), F.S. ; *see also* s. 1013.372, F.S.

<sup>32</sup> FLA. ADMIN. CODE R. 27P-2.002, incorporates the CEMP by reference; *See* Comprehensive Emergency Management Plan, Division of Emergency Management, available at <https://www.floridadisaster.org/globalassets/importedpdfs/2014-state-emp-basic-plan.pdf> (last visited January 29, 2020).

<sup>33</sup> 2018 Statewide Emergency Shelter Plan, DIVISION OF EMERGENCY MANAGEMENT, available at <https://www.floridadisaster.org/globalassets/dem/response/sesp/2018/2018-sesp-entire-document.pdf> (last visited January 29, 2020).

<sup>34</sup> Section 252.35(2)(a)2., F.S.

<sup>35</sup> *Id.*

<sup>36</sup> Section 1013.372(2), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Supra*, note 33 at Appendix F, pg. F-2.

### III. Effect of Proposed Changes:

**Section 1** creates 252.385(5), to exempt<sup>40</sup> from public inspection and copying the name, address, and telephone number of a person which are held by an agency, as defined in s. 119.011, F.S., providing shelter or assistance to such person during an emergency.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act and will repeal October 2, 2025, unless the Legislature reviews and reenacts the exemptions by that date.

**Section 2** provides a public necessity statement as required by the Florida Constitution. The statement asserts that:

“Shelters are made available to the public to provide a safe place of accommodation before, during, and immediately following an emergency. During an emergency, the people affected are in a vulnerable state, as they have voluntarily displaced themselves from their residences and possessions to seek refuge. The information submitted to an agency by such a person seeking shelter or assistance could be used by persons seeking to take advantage of their vulnerability during or following the emergency. In addition, people seeking shelter or assistance for their safety and the safety of their families should not be forced to forfeit their privacy for the sake of such safety.”

**Section 3** provides that the bill takes effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

#### B. Public Records/Open Meetings Issues:

##### ***Vote Requirement***

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for the name, address, and

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<sup>40</sup> There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 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 WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att’y Gen. Fla. 85-692 (1985).

telephone number of a person using a public shelter or provided assistance by an agency during an emergency, 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 the name, address, and telephone number of a person using a public shelter or provided assistance by an agency during an emergency. This SB exempts only the name, address, and telephone number of a person using a public shelter or provided assistance by an agency during an emergency from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on agencies due to the fact agency staff responsible for complying with public records requests may require training related to the creation of the public records exemptions. Costs associated with redacting the exempt information prior to releasing a record may be incurred. The costs, however, would be absorbed by existing resources, as they are part of day-to-day responsibilities.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 252.385, Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By the Committee on Infrastructure and Security

596-03048-20

20207048\_\_

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 252.385, F.S.; creating an exemption from public  
 4 records requirements for the name, address, and  
 5 telephone number of a person which are held by an  
 6 agency providing shelter or assistance to such person  
 7 during an emergency; providing for future legislative  
 8 review and repeal of the exemption; providing a  
 9 statement of public necessity; providing an effective  
 10 date.

11  
 12 Be It Enacted by the Legislature of the State of Florida:

13  
 14 Section 1. Subsection (5) is added to section 252.385,  
 15 Florida Statutes, to read:  
 16 252.385 Public shelter space; public records exemption.-  
 17 (5) The name, address, and telephone number of a person  
 18 which are held by an agency, as defined in s. 119.011, providing  
 19 shelter or assistance to such person during an emergency are  
 20 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 21 Constitution. This subsection is subject to the Open Government  
 22 Sunset Review Act in accordance with s. 119.15 and shall stand  
 23 repealed on October 2, 2025, unless reviewed and saved from  
 24 repeal through reenactment by the Legislature.  
 25 Section 2. The Legislature finds that it is a public  
 26 necessity that the name, address, and telephone number of a  
 27 person which are held by an agency providing shelter or  
 28 assistance to such person during an emergency be made exempt  
 29 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

596-03048-20

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30 the State Constitution. Shelters are made available to the  
 31 public to provide a safe place of accommodation before, during,  
 32 and immediately following an emergency. During an emergency, the  
 33 people affected are in a vulnerable state, as they have  
 34 voluntarily displaced themselves from their residences and  
 35 possessions to seek refuge. The information submitted to an  
 36 agency by such a person seeking shelter or assistance could be  
 37 used by persons seeking to take advantage of their vulnerability  
 38 during or following the emergency. In addition, people seeking  
 39 shelter or assistance for their safety and the safety of their  
 40 families should not be forced to forfeit their privacy for the  
 41 sake of such safety. Therefore, the Legislature finds that it is  
 42 a public necessity to protect such information from public  
 43 disclosure.

44 Section 3. This act shall take effect upon becoming a law.

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The Florida Senate

## Committee Agenda Request

**To:** Senator Benacquisto, Chair  
Rules Committee

**Subject:** Committee Agenda Request

**Date:** February 18, 2020

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I respectfully request that **Senate Bill #7048**, relating to Public Records/Public Shelter Space be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink that reads "Tom Lee".

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Senator Tom Lee  
Florida Senate, District 20

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7052

INTRODUCER: Innovation, Industry and Technology Committee

SUBJECT: Office of Public Counsel

DATE: February 24, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Imhof</u>	<u>RC</u>	<b>IT Submitted as a Comm.Bill/Fav</b>
	<u>Wiehle</u>	<u>Phelps</u>		<b>Pre-meeting</b>

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**I. Summary:**

SB 7052 establishes a four-year term for the Public Counsel beginning March 1, 2021. The bill clarifies the Public Counsel serves at the pleasure of the joint committee and is appointed by a majority vote of the committee appointees of each house, and provides the committee may remove the Public Counsel with a majority vote of the committee appointees of each house.

The bill requires the joint committee to receive applications, conduct interviews, and appoint a Public Counsel to a four-year term beginning on March 1, 2021, and every four years thereafter. The Public Counsel may continue in office beyond the four-year limit until his or her successor is appointed and takes office, unless removed by the committee. In no event may a person serve as the Public Counsel for more than 12 consecutive years.

The bill takes effect July 1, 2020.

**II. Present Situation:**

The Joint Committee on Public Counsel Oversight is a standing joint committee established by the Joint Rules of the Florida Legislature.<sup>1</sup> No fewer than five and no more than seven members of each house must be appointed to serve on the joint committee.<sup>2</sup> The joint committee has the authority to appoint a Public Counsel.<sup>3</sup>

The Public Counsel must be an attorney admitted to practice before the Florida Supreme Court. The Public Counsel is appointed by the joint committee and serves at the pleasure of the joint committee, subject to biennial reconfirmation.<sup>4</sup>

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<sup>1</sup> Joint Rule 4.1(1)(b), Joint Rules of the Florida Legislature.

<sup>2</sup> Joint Rule 4.1(3), Joint Rules of the Florida Legislature.

<sup>3</sup> Joint Rule 4.7, Joint Rules of the Florida Legislature, and s. 350.061, F.S.

<sup>4</sup> Section 350.061(1), F.S.

The Public Counsel has the statutory duty to provide legal representation for the people of the state in proceedings before the Florida Public Service Commission and in proceedings concerning a water or wastewater utility before counties that have opted out of PSC jurisdiction over such utilities.<sup>5</sup>

The Public Counsel is under the legislative branch, and the Governor has no power to release or withhold funds appropriated to it or to determine the number, or fix the compensation, of the employees of the Public Counsel or to exercise any control over them.<sup>6</sup>

The Public Counsel is appointed by and serves at the pleasure of the committee, and is subject to biennial reconfirmation. Vacancies in the office are to be filled in the same manner as the original appointment. The Public Counsel is to perform his or her duties independently.<sup>7</sup>

### **III. Effect of Proposed Changes:**

The bill establishes a four-year term for the Public Counsel beginning March 1, 2021. The bill provides that the Public Counsel is to be appointed by a majority vote of the committee appointees of each house and the joint committee may remove the Public Counsel with a majority vote of the committee appointees of each house.

The bill requires the joint committee to receive applications, conduct interviews, and appoint a Public Counsel to a four-year term beginning on March 1, 2021, and every four years thereafter. The Public Counsel may continue in office beyond the four-year limit until his or her successor is appointed and takes office, unless removed by the committee. In no event may a person serve as the Public Counsel for more than 12 consecutive years.

The bill takes effect July 1, 2020.

### **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.

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<sup>5</sup> Section 350.0611, F.S.

<sup>6</sup> Section 350.0614, F.S.

<sup>7</sup> Section 350.061, F.S.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 350.061 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By the Committee on Innovation, Industry, and Technology

580-03378-20

20207052\_\_

1 A bill to be entitled  
 2 An act relating to the Office of Public Counsel;  
 3 amending s. 350.061, F.S.; providing term limits for  
 4 the Public Counsel; providing for the appointment and  
 5 removal of the Public Counsel; requiring the Committee  
 6 on Public Counsel Oversight to receive applications,  
 7 conduct interviews, and appoint a Public Counsel by a  
 8 specified date every 4 years; providing for the  
 9 filling of vacancies; providing an effective date.

10 Be It Enacted by the Legislature of the State of Florida:

11 Section 1. Subsection (1) of section 350.061, Florida  
 12 Statutes, is amended to read:

13 350.061 Public Counsel; appointment; oath; restrictions on  
 14 Public Counsel and his or her employees.—

15 (1) The committee designated by joint rule of the  
 16 Legislature or by agreement between the President of the Senate  
 17 and the Speaker of the House of Representatives as the Committee  
 18 on Public Counsel Oversight shall appoint a Public Counsel to  
 19 represent the general public of Florida before the Florida  
 20 Public Service Commission. The Public Counsel shall be an  
 21 attorney admitted to practice before the Florida Supreme Court,  
 22 ~~and shall be appointed for a term of 4 years, and may be~~  
 23 reappointed thereafter, provided that a person appointed as the  
 24 Public Counsel may not serve more than 12 consecutive years in  
 25 the position. The Public Counsel shall be appointed by a  
 26 majority vote of the committee appointees of each house and may  
 27 be removed from office by a majority vote of the committee  
 28  
 29

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

580-03378-20

20207052\_\_

30 appointees of each house. A person may continue as Public  
 31 Counsel beyond the 4-year term until his or her successor is  
 32 appointed and takes office, unless the person is removed by a  
 33 vote of the committee. The Committee on Public Counsel Oversight  
 34 shall receive applications, conduct interviews, and appoint a  
 35 Public Counsel to a 4-year term beginning on March 1, 2021, and  
 36 every 4 years thereafter ~~serve at the pleasure of the Committee~~  
 37 ~~on Public Counsel Oversight, subject to biennial reconfirmation~~  
 38 ~~by the committee.~~ The Public Counsel shall perform his or her  
 39 duties independently. Vacancies in the office shall be filled  
 40 for the remainder of the unexpired term in the same manner as  
 41 the original appointment.

42 Section 2. This act shall take effect July 1, 2020.

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**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SJR 7062

INTRODUCER: Judiciary Committee

SUBJECT: Citizen Initiative

DATE: February 28, 2020

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
<u>Cibula</u>	<u>Cibula</u>		<b>JU Submitted as Comm. Bill/FAV</b>
1. <u>Cibula</u>	<u>Phelps</u>	<u>RC</u>	<b><u>Pre-meeting</u></b>

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**I. Summary:**

SJR 7062 is a joint resolution to amend the Florida Constitution to change the geographic distribution requirement for signatures on citizen initiative petitions. To place an initiative on the ballot, initiative proponents will be required to show that an initiative has some public support in all, instead of half, of the state's 27 congressional districts.

Proponents must demonstrate sufficient public support by collecting signatures on initiative petitions from each congressional district of the state in a number equal to 8 percent of the votes cast in each district in the last presidential election. Under the current geographic distribution requirement in the Constitution, signatures must satisfy the 8 percent threshold in at least half of the state's 27 congressional districts.

The joint resolution does not change the total number of signatures on petitions that must be obtained to place a citizen initiative amendment on the ballot.

**II. Present Situation:**

The Florida Constitution authorizes five methods by which proposed amendments may be submitted to the electors for approval.<sup>1</sup> These methods of amendment allow proposals to be submitted to the electors by the Legislature, the constitution revision commission, the taxation and budget reform commission, a constitutional convention, and a citizen initiative.

The authorization for citizen initiatives is set forth in Article XI, section 3 of the Florida Constitution, which states:

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision

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<sup>1</sup> FLA. CONST. Art. XI.

or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

The Constitution requires the proponents of a citizen initiative amendment to demonstrate that the initiative has sufficiently broad public support. Public support is demonstrated by collecting signatures of registered voters equal to 8 percent of the voters voting in the last presidential election. This means that at least 766,200 valid signatures must be collected to place an initiative on the 2020 General Election Ballot.<sup>2</sup> Additionally, the 8 percent threshold must also be met in at least half or 14 of the state's 27 congressional districts as shown in the table below.<sup>3</sup>

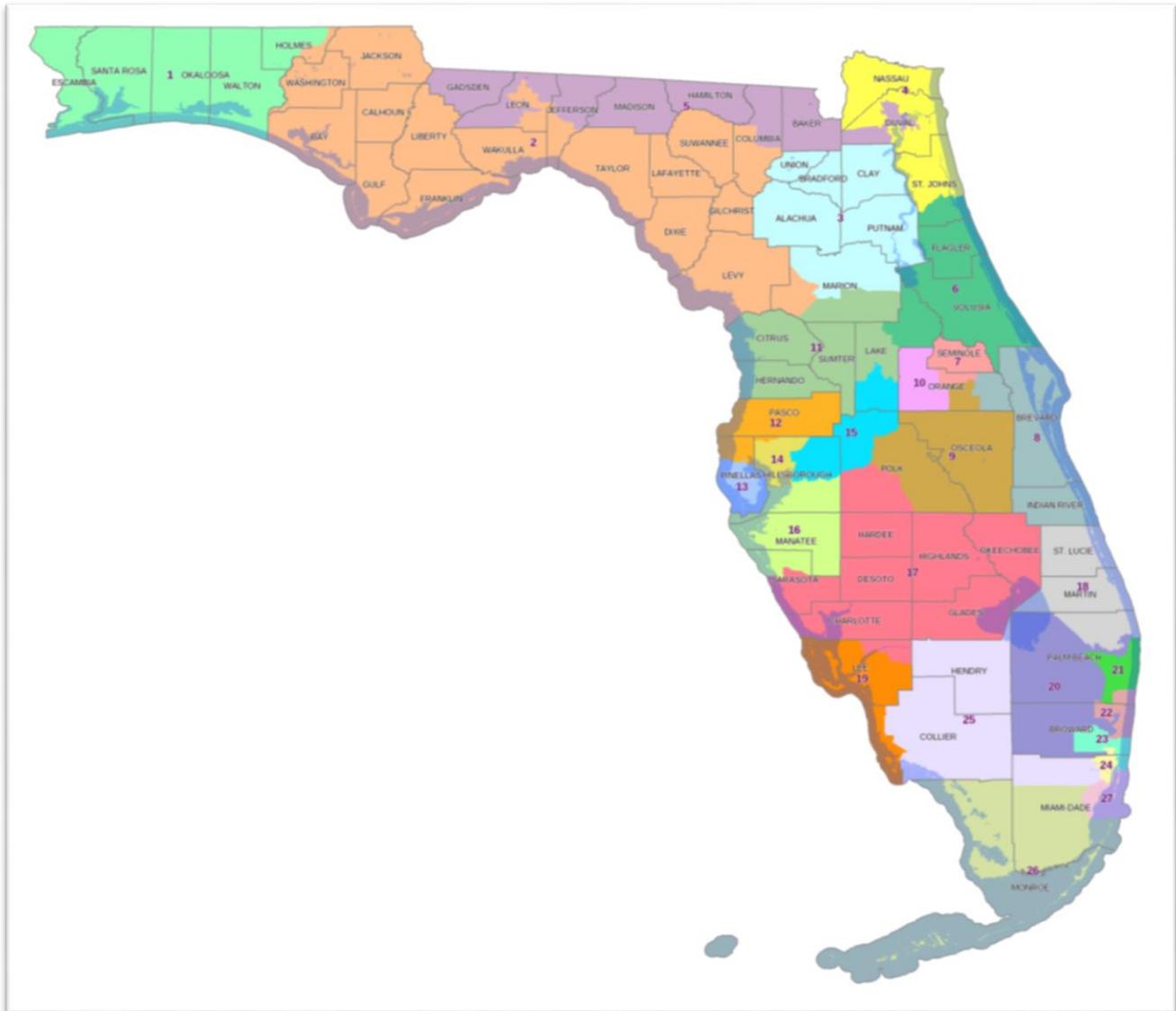
Congressional District	Votes Cast in 2016 Presidential Election	8% Threshold (for Ballot Position)
First	386,504	30,921
Second	360,098	28,808
Third	356,715	28,538
Fourth	428,190	34,256
Fifth	316,115	25,290
Sixth	385,918	30,874
Seventh	370,466	29,638
Eighth	409,569	32,766
Ninth	362,593	29,008
Tenth	320,548	25,644
Eleventh	417,253	33,381
Twelfth	386,775	30,942
Thirteenth	367,818	29,426
Fourteenth	336,289	26,904
Fifteenth	340,331	27,227
Sixteenth	403,805	32,305
Seventeenth	360,061	28,805
Eighteenth	388,772	31,102
Nineteenth	389,415	31,154
Twentieth	291,984	23,359
Twenty-First	355,842	28,468
Twenty-Second	361,305	28,905
Twenty-Third	342,784	27,423
Twenty-Fourth	269,446	21,556
Twenty-Fifth	269,983	21,599
Twenty-Sixth	294,742	23,580
Twenty-Seventh	304,012	24,321
<b>Total</b>	<b>9,577,333</b>	<b>766,200</b>

<sup>2</sup> Division of Elections, Florida Department of State, *2018 Initiative Petition Handbook* (last updated Dec. 29, 2017) <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf>.

<sup>3</sup> *Id.* at Appendix B.

**Source: Division of Elections, 2018 Initiative Petition Handbook.**

A map of the state’s congressional districts is shown below.



Geographic distribution requirements for petition signatures reflect the view that they are important because they “force initiative proponents to demonstrate that their proposal has support statewide, not just among the citizens of the state’s most populous region.”<sup>4</sup> In states lacking a geographic distribution requirement for signatures, “it is not only possible but common for initiative proponents to gather all their signatures in the state’s largest city. The voters in the largest city, therefore, may decide for the state as a whole what issues make the ballot and what issues do not.”<sup>5</sup>

<sup>4</sup> *Angle v. Miller*, 673 F.3d 1122, 1135 (9th Cir. 2012) (quoting National Conference of State Legislatures, *Initiative Petition Signature Requirements* (Apr. 7, 1010)).

<sup>5</sup> National Conference of State Legislatures, *Initiative Petition Signature Requirements* (Sept. 20 2012), <https://www.ncsl.org/research/elections-and-campaigns/signature-requirements.aspx>.

### III. Effect of Proposed Changes:

This joint resolution proposes an amendment to the Florida Constitution to change the geographic distribution requirement for signatures on citizen initiative petitions. To place an initiative on the ballot, initiative proponents will be required to show that an initiative has some public support in all of the state's 27 congressional districts instead of half of the state's congressional districts.

Proponents must demonstrate sufficient public support by collecting signatures on an initiative petition from each congressional district of the state in a number equal to 8 percent of the votes cast in each district in the last presidential election. Under the current geographic distribution requirement in the Constitution, signatures must satisfy the 8 percent threshold in at least half, or 14, of the state's 27 congressional districts. The joint resolution does not change the total number of signatures on petitions that must be obtained to place a citizen initiative amendment on the ballot.

If approved by at least 60 percent of the electors voting on the measure at the 2020 general election, the joint resolution will take effect January 5, 2021.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Because this joint resolution proposes an amendment to the Florida Constitution, it must be approved by a three-fifths vote of the membership of each house of the Legislature in order for the amendment to be submitted to the electors.<sup>6</sup>

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<sup>6</sup> FLA. CONST. s. 1, Art. X.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This amendment will likely increase costs of proponents to place a citizen initiative amendment to the Florida Constitution on the ballot. It is likely more cost effective for petition circulators to collect signatures in densely populated congressional districts than it is for them to collect signatures in rural areas having lower population densities.<sup>7</sup>

**C. Government Sector Impact:**

The new geographic distribution requirements may result in supervisors of elections in rural areas overlooked in past initiative campaigns having to verify more signatures on initiatives. Conversely, supervisors of elections in densely populated areas will likely see a decrease in the number of petitions submitted for verification.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This joint resolution substantially amends Article XI, section 3 of the Florida Constitution.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>7</sup> See *Semple v. Griswold*, 934 F.3d 1134, 1142 (10th Cir. 2019) (quoting difficulties claimed by plaintiffs challenging a requirement that signatures for initiative petitions be collected in each of Colorado's Senate districts).

By the Committee on Judiciary

590-03976-20

20207062\_\_

## Senate Joint Resolution

A joint resolution proposing an amendment to Section 3 of Article XI of the State Constitution to revise threshold requirements for the number of petitions signed by electors needed in order for a citizen initiative to amend or revise the State Constitution to be placed on the ballot.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 3 of Article XI of the State Constitution is 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 XI  
AMENDMENTS

SECTION 3. Initiative.—The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each ~~of one half~~ of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which

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590-03976-20

20207062\_\_

presidential electors were chosen.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

## CONSTITUTIONAL AMENDMENT

## ARTICLE XI, SECTION 3

PETITION THRESHOLD REQUIREMENTS FOR CITIZEN INITIATIVES.— Proposing an amendment to the State Constitution to require that a specified number of petitions must be signed by the electors in each congressional district of the state in order for a citizen initiative to amend or revise the State Constitution to be placed on the ballot.

Page 2 of 2

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7064  
INTRODUCER: Judiciary Committee  
SUBJECT: Probation Violations  
DATE: February 24, 2020      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cox</u>	<u>Cibula</u>	<u>RC</u>	<b>JU Submitted as Comm. Bill/FAV</b>
	<u>Cox</u>	<u>Phelps</u>		<b>Favorable</b>

---

**I. Summary:**

SB 7064 amends s. 948.06, F.S., providing that the court must modify or continue a probationary term upon finding a probationer in violation when *all*, rather than *any*, of the following applies:

- The term of supervision is probation.
- The probationer does not qualify as a violent felony offender of special concern (VFOSC).
- The violation is a low-risk technical violation, as defined in s. 948.06(9)(b), F.S.
- The court has not previously found the probationer in violation of his or her probation pursuant to a filed violation of probation affidavit during the current term of supervision. A probationer who has successfully completed sanctions through the alternative sanctioning program is eligible for mandatory modification or continuation of his or her probation.

To the extent that this results in fewer people being continued on probation or having their probation modified, the bill may result in a negative indeterminate prison bed impact and jail bed impact due to more people having their probation revoked and sentenced to prison or jail. See Section V. Fiscal Impact Statement.

The bill is effective upon becoming law.

**II. Present Situation:**

**Probation Supervision through the Department of Corrections**

At sentencing, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.<sup>1</sup> The Department of Corrections (DOC) supervises more than 164,000 offenders on active community supervision. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered

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<sup>1</sup> Section 948.01, F.S.

supervision including probation, drug offender probation, sex offender probation, and community control.<sup>2</sup>

### ***Probation***

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose to ensure the offender's compliance with the terms of the sentence and the safety to the community.<sup>3</sup> Section 948.03, F.S., provides that a court must determine the terms and conditions of probation. Standard conditions of probation that are enumerated in s. 948.03, F.S., are not required to be announced on the record, but the court must orally pronounce, as well as provide in writing, any special conditions of probation imposed.

### ***Violations of Probation***

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.<sup>4</sup> A violation of probation (VOP) can be the result of a new violation of law or a technical violation of the conditions imposed. If reasonable grounds exist to believe that an offender has violated his or her terms of supervision in a material respect, an offender may be arrested without a warrant by a:

- Law enforcement officer who is aware of the inmate's supervised community release status;
- Probation officer; or
- County or municipal law enforcement officer upon request by a probation officer.<sup>5</sup>

The offender must be returned to the court granting such probation.<sup>6</sup> Additionally, the committing court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the offender.<sup>7</sup>

Upon a finding through a VOP hearing, a court may revoke, modify, or continue the supervision. If the court chooses to revoke the supervision, it may impose any sentence originally permissible before placing the offender on supervision.<sup>8</sup> In addition, if an offender qualifies as a VFOSC, the court must revoke supervision, unless it makes written findings that the VFOSC does not pose a danger to the community.<sup>9</sup> The VFOSC status also accrues sentence points under the Code, which affects the scoring of the lowest permissible sentence.<sup>10</sup>

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<sup>2</sup> The DOC, *Probation Services*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited February 17, 2020).

<sup>3</sup> Section 948.001(8), F.S. Terms and conditions of probation are provided in s. 948.03, F.S.

<sup>4</sup> Section 948.10(3), F.S.

<sup>5</sup> Section 948.06(1)(a), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the probationer or controlee has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as enumerated in s. 948.06(8)(c), F.S.

<sup>8</sup> Section 948.06(2)(b), F.S.

<sup>9</sup> See s. 948.06(8)(a), F.S., for all VFOSC qualifications and the enumerated list of felonies that are considered qualifying offenses. See also ch. 2007-2, L.O.F.

<sup>10</sup> Section 921.0024, F.S.

***CS/HB 7125 (2019)***

Prior to October 1, 2019, the effective date for section 63 of CS/HB 7125 (2019),<sup>11</sup> the sentencing court had the complete discretion to determine whether to continue, modify, or revoke an offender's probation subsequent to a violation of probation.<sup>12</sup> However, in part, CS/HB 7125 (2019) amended s. 948.06, F.S., providing that the court must modify or continue a probationary term upon finding a probationer in violation when *any* of the following applies:

- The term of supervision is probation.
- The probationer does not qualify as a VFOSC.
- The violation is a low-risk technical violation, as defined in s. 948.06(9)(b), F.S.<sup>13</sup>
- The court has not previously found the probationer in violation of his or her probation pursuant to a filed violation of probation affidavit during the current term of supervision. A probationer who has successfully completed sanctions through the alternative sanctioning program is eligible for mandatory modification or continuation of his or her probation.

Further, if the court is required to modify or continue the probationary term, the court may include in the sentence a maximum of 90 days in county jail as a special condition of probation.<sup>14</sup>

CS/HB 7125 (2019) also provided that if a probationer has less than 90 days of supervision remaining on his or her term of probation and meets the criteria for mandatory modification or continuation, the court may revoke probation and sentence the probationer to a maximum of 90 days in county jail.<sup>15</sup>

However, the intent for this provision was to require modification or continuation of probation only when *all* of the enumerated circumstances were present.

**III. Effect of Proposed Changes:**

The bill amends s. 948.06(2)(f)1., F.S., clarifying that the court only is required to modify or continue an offender's probationary term if *all*, rather than *any*, of the above-mentioned enumerated factors applies.

The bill is effective upon becoming law.

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<sup>11</sup> Chapter 2019-167, L.O.F.

<sup>12</sup> See s. 948.06, F.S. (2018).

<sup>13</sup> Section 948.06(9)(b), F.S., defines a "low-risk violation" to mean any of the following: a positive drug or alcohol test result; failure to report to the probation office; failure to report a change in address or other required information; failure to attend a required class, treatment or counseling session, or meeting; failure to submit to a drug or alcohol test; a violation of curfew; failure to meet a monthly quota on any required probation condition, including, but not limited to, making restitution payments, paying court costs, or completing community service hours; leaving the county without permission; failure to report a change in employment; associating with a person engaged in criminal activity; or any other violation as determined by administrative order of the chief judge of the circuit.

<sup>14</sup> Section 948.06(2)(f)2., F.S.

<sup>15</sup> See s. 948.06(2)(f)3., F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The bill clarifies that all of the enumerated conditions must be satisfied for a court to be required to continue or modify a person on probation subsequent to certain violations of probation. To the extent that this results in less people being continued or modified on probation, the bill may result in a negative indeterminate prison bed impact and jail bed impact due to more people having their probation revoked and sentenced to prison or jail.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 948.06 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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By the Committee on Judiciary

590-03975-20

20207064\_\_

1 A bill to be entitled  
 2 An act relating to probation violations; amending s.  
 3 948.06, F.S.; requiring a court to modify or continue  
 4 a probationary term upon finding that a probationer  
 5 has met all specified conditions, rather than any of  
 6 the conditions, after a violation of probation;  
 7 providing an effective date.  
 8  
 9 Be It Enacted by the Legislature of the State of Florida:  
 10  
 11 Section 1. Paragraph (f) of subsection (2) of section  
 12 948.06, Florida Statutes, is amended to read:  
 13 948.06 Violation of probation or community control;  
 14 revocation; modification; continuance; failure to pay  
 15 restitution or cost of supervision.-  
 16 (2)  
 17 (f)1. Except as provided in subparagraph 3. or upon waiver  
 18 by the probationer, the court shall modify or continue a  
 19 probationary term upon finding a probationer in violation when  
 20 all ~~any~~ of the following apply ~~applies~~:  
 21 a. The term of supervision is probation.  
 22 b. The probationer does not qualify as a violent felony  
 23 offender of special concern, as defined in paragraph (8)(b).  
 24 c. The violation is a low-risk technical violation, as  
 25 defined in paragraph (9)(b).  
 26 d. The court has not previously found the probationer in  
 27 violation of his or her probation pursuant to a filed violation  
 28 of probation affidavit during the current term of supervision. A  
 29 probationer who has successfully completed sanctions through the

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30 alternative sanctioning program is eligible for mandatory  
 31 modification or continuation of his or her probation.  
 32 2. Upon modifying probation under subparagraph 1., the  
 33 court may include in the sentence a maximum of 90 days in county  
 34 jail as a special condition of probation.  
 35 3. Notwithstanding s. 921.0024, if a probationer has less  
 36 than 90 days of supervision remaining on his or her term of  
 37 probation and meets the criteria for mandatory modification or  
 38 continuation in subparagraph 1., the court may revoke probation  
 39 and sentence the probationer to a maximum of 90 days in county  
 40 jail.  
 41 4. For purposes of imposing a jail sentence under this  
 42 paragraph only, the court may grant credit only for time served  
 43 in the county jail since the probationer's most recent arrest  
 44 for the violation. However, the court may not order the  
 45 probationer to a total term of incarceration greater than the  
 46 maximum provided by s. 775.082.  
 47 Section 2. This act shall take effect upon becoming a law.

Page 2 of 2

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/26/2020

Meeting Date

70684

Bill Number (if applicable)

Topic Budget

Amendment Barcode (if applicable)

Name MARCOUS DIXON

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing SEIU FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

# CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Rules Committee

Judge:

Started: 2/26/2020 9:00:30 AM

Ends: 2/26/2020 2:00:21 PM

Length: 04:59:52

9:00:29 AM Meeting called to order  
9:00:30 AM Chair calls order to the room  
9:00:30 AM Chair instructs  
9:01:06 AM Pause for paperwork  
9:01:18 AM Recording Paused  
9:01:50 AM Recording Resumed  
9:01:55 AM Roll call  
9:01:57 AM Quorum is present  
9:02:21 AM Chair instructions  
9:02:51 AM Tab 18 SB 752  
9:03:12 AM Senator Bean explains the bill  
9:03:18 AM Questions-none  
9:03:26 AM Frank Bernadino, Palm Beach County, waives in support  
9:03:37 AM Jared Rosenstein, TLH Florida Division Emergency Management, in support  
9:03:44 AM No debate  
9:03:50 AM Senator waives close  
9:04:00 AM Roll call  
9:04:03 AM SB 752 is reported favorably  
9:04:14 AM Tab 22 966  
9:04:42 AM Senator Gainer explains the bill  
9:04:59 AM Questions-none  
9:05:29 AM No testimony  
9:05:35 AM No debate  
9:05:37 AM Senator waives close  
9:05:41 AM Roll call  
9:06:01 AM CS/SB 966 is reported favorably  
9:06:17 AM Tab 2 CS/CS/SB 1794  
9:06:31 AM Senator Hutson explains the bill  
9:07:13 AM Questions: Senator Rodriguez  
9:08:11 AM Senator Hutson responds  
9:09:07 AM Senator Rodriguez with follow up questions  
9:10:07 AM Senator Hutson replies  
9:10:35 AM Senator Rodriguez  
9:10:40 AM Senator Hutson  
9:11:35 AM Senator Rodriguez  
9:11:44 AM Senator Hutson in response  
9:12:16 AM Senator Hutson in response  
9:12:23 AM Senator Rodriguez follow up  
9:12:29 AM Senator Hutson  
9:12:37 AM Senator Thurston with question  
9:12:45 AM Senator Hutson answers  
9:13:20 AM Senator Thurston with follow up  
9:14:01 AM Senator Hutson  
9:14:01 AM Senator Thurston with follow up  
9:14:21 AM Senator Hutson  
9:15:52 AM Senator Hutson  
9:15:53 AM Senator Thurston with follow up  
9:16:12 AM Senator Hutson answers  
9:16:59 AM Senator Hutson answers  
9:17:01 AM Senator Thurston continues  
9:17:11 AM Senator Hutson replies  
9:17:50 AM Senator Thurston with question

9:18:01 AM Senator Hutson  
9:18:51 AM Senator Thurston with last question  
9:19:21 AM Senator Hutson  
9:19:28 AM Leader Gibson with question  
9:19:37 AM Senator Hutson  
9:19:52 AM Leader Gibson with follow up  
9:20:28 AM Senator Hutson answers  
9:20:37 AM Leader Gibson  
9:20:42 AM Amendment 763622 is taken up  
9:22:33 AM Amendment 763622 is explained by Senator Rodriguez  
9:22:34 AM No questions  
9:22:38 AM No testimony  
9:22:42 AM No debate  
9:22:54 AM Senator waives close  
9:23:02 AM Amendment 763622 fails  
9:23:05 AM Amendment 258150 by Senator Hutson  
9:23:54 AM 258150 is explained  
9:23:55 AM 258150 questions- none  
9:23:56 AM Public appearance  
9:24:14 AM Matt Dailey, Grad Student FSU MAAPP, in support/Rev. Joe Parramore, New Journey Ministries Quincy & Robert Mckinnon, JAX Fatih in Public Life, against  
9:24:33 AM No debate, Senator waives close. Amendment 258150 is adopted  
9:25:22 AM Amendment 640730 explained by Senator Hutson  
9:25:57 AM Questions- Senator Thurston  
9:26:10 AM Senator Hutson answers  
9:27:04 AM Leader Gibson with question  
9:28:05 AM Senator Hutson replies  
9:28:26 AM No testimony  
9:28:30 AM No debate  
9:28:34 AM Amendment is adopted  
9:28:45 AM 641890 by Senator Hutson is explained  
9:28:56 AM AA 283462 is explained by Senator Hutson  
9:29:34 AM Questions on AA- Senator Thurston  
9:29:59 AM Senator Hutson answers  
9:30:04 AM Senator Thurston follow up  
9:30:13 AM Senator Hutson  
9:30:19 AM Senator Thurston last question  
9:30:26 AM Senator Hutson replies  
9:30:58 AM No testimony  
9:31:01 AM No debate  
9:31:04 AM Amendment 283462 is adopted  
9:31:10 AM Back on A 641890  
9:31:23 AM Question by Senator Brandes  
9:31:31 AM Senator Hutson replies  
9:32:24 AM Senator Braynon with question  
9:32:59 AM Senator Hutson answers  
9:33:20 AM Senator Brandes in debate  
9:33:39 AM Senator Thurston in debate  
9:34:48 AM Senator Hutson withdraws this amendment 641890  
9:35:17 AM Questions on the bill  
9:35:20 AM Senator Flores with question  
9:35:35 AM Senator Hutson answers  
9:36:00 AM Senator Flores follow up  
9:36:07 AM Senator Hutson answers  
9:36:31 AM Senator Flores with follow up  
9:36:37 AM Senator Hutson relpies  
9:37:07 AM Senator Flores follow up  
9:37:31 AM Senator Hutson  
9:38:38 AM Senator Flores in follow up  
9:38:56 AM Senator Hutson  
9:40:05 AM Leader Gibson with question on the bill  
9:40:15 AM Senator Hutson answers

9:42:34 AM Leader Gibson with follow up  
9:43:44 AM Senator Hutson answers  
9:44:42 AM Public Testimony below- names read into the record  
9:44:48 AM Time limit is to be 1 minute each  
9:44:56 AM Charla S. Fox, Teacher - Ft Myers, against  
9:46:32 AM Eric Rodriguez, Teacher from Live Oak, against  
9:47:05 AM Caitlin Gille, Assoc Professor -Tampa, against  
9:48:19 AM Laura Lovett-Estma District Records Clerk Fort Pierce against  
9:49:17 AM David Cullen, Sierra Club, against  
9:50:21 AM Jodi James, Chair Floridians for Freedom Melbourne, FL, against  
9:51:20 AM Rich Templin, FL AFL- CIO, against  
9:52:06 AM Kara Gross, Legislator Director Miami American Civil Liberties Union of FL, against  
9:55:26 AM April Isaac, Teacher Kissimmee Osceola County Education Association, against  
9:55:30 AM John Bauman Lake Worth against  
9:55:35 AM Roberto A Cruz Lake Worth against  
9:55:39 AM Kimbra Hanshaw, Teacher Zolfe Springs, against  
9:55:44 AM April Clark, Public Educator Sebring, against / Ida V Eskamoni, Public Policy Orandi Organize FL and New FL Majority, against  
9:55:51 AM William Wallin Teacher Parrish against / Pam Denton, Teacher TLH, against  
9:55:54 AM Trish Neely Consultant TLH League Women Voters against/Belinda Riffenburg Tampa against/ Mitzi Powell Teacher Bowling Green against  
9:55:56 AM Samantha Mrozowski Teacher Sebring against  
9:56:02 AM Laura Lovett Eskima against/ Marcus Dixon SEIV against  
9:56:11 AM Matt Dailey Grad Student FSU MAAPP against  
9:56:14 AM Rev. Joe Paramore Pastor Quincy New Journey Ministries against  
9:56:18 AM Nicolette Owens High School Educator Fort Pierce against  
9:56:24 AM Paul Hamilton Teacher Boynton Beach against  
9:56:28 AM Lare Allen Middle School Dean of Students Kissimmee against  
9:56:35 AM Chenavia Smith Organizer Apopka against  
9:56:39 AM Melissa Merriweather Instructional Paraprofessional Ocala against  
9:56:44 AM Nicholas Mrozowski Sebring against  
9:56:51 AM Dr. Ana Ciereszko Miami against  
9:57:02 AM Dr. Mitcheal Pearl Bradenton against  
9:57:09 AM Jane West Policy & Planning Director 1000 Friends of FL against  
9:57:19 AM Marcus Dixon SEIV FLORIDA against  
9:59:03 AM Marcia Beasley Retired Citizen Riverview against  
9:59:06 AM Bryan Porter Electrician Salt Springs against  
9:59:10 AM Kim Smith Tampa against  
9:59:16 AM Veronica Smith Teacher Spring Hill against  
9:59:20 AM Trevor Chapman Electrician Ocala against  
9:59:23 AM Andy Starling Bronson against  
9:59:26 AM Barbara Bridgett Teacher Royal Palm Beach against  
9:59:31 AM Kevin Hansen Teacher Ocala against  
9:59:35 AM Frank Angel Boca Raton against  
9:59:40 AM James C Noratz orlando against  
9:59:48 AM Jayne Walker Orlando against  
9:59:52 AM Lauryn Duckworth Teacher Ocala FL against  
9:59:58 AM Karen Woodall Exec Dir FL Center for Fiscal & Economic Policy against  
10:00:00 AM Christopher Emmanuel Polcy Director TLH Florida Chamber against  
10:00:01 AM Colleen Peterson Teacher Port St. Lucie against  
10:00:07 AM LaShawn Floyd Educational Support Professionals Port St Lucie against  
10:00:11 AM Tanya Bailey Veteran Liaision Winterhaven FL Cannabis Action Network against  
10:00:16 AM Tabitha Burress Naples against  
10:00:20 AM William Lawson Field Rep Orlando against  
10:00:29 AM Jason Sorenson Electrical Workers One Hill Against  
10:00:32 AM Adam Campbell Lake Worth against  
10:00:39 AM J.B. Clark Lobbyist TLH FL Electrical Workers Association against  
10:00:40 AM Rob Kriete President Hillsborough Classroom Teacher Association Riverview against  
10:00:44 AM B.D. Jogerst Associated Industries of FL against  
10:00:47 AM Johnny A. Green Educator Riverview against  
10:00:50 AM Chris Rusnak Teacher Temple Terrace against  
10:00:56 AM Jonathan Webber Deputy Director TLH Florida Conservation Voters TLH against

10:01:01 AM Robert Chapman State Employee Plant City against  
10:01:05 AM Shaquille Mackey International Longshoreman against  
10:01:15 AM Angie Doherty Gainesville against/ Nicole Biener Teacher Gainesville against  
10:01:17 AM Michael Nelson Heavy Equip Operator Ocala against  
10:01:21 AM Veronica McBurse Longshoreman Orlando against  
10:01:26 AM Natalie Hayes Longshoreman Orlando against  
10:01:29 AM David Ash Common Cause FL against  
10:01:40 AM Robert McKinnon State Director Jacksonville Faith in Public Life against  
10:02:02 AM Senator Braynon with debate  
10:04:26 AM Senator Rodriguez with debate  
10:06:30 AM Leader Gibson in debate  
10:08:10 AM Senator Thurston in debate  
10:10:09 AM Senator Brandes in debate  
10:11:45 AM Senator Bradley in debate  
10:15:29 AM Senator Lee in debate  
10:18:34 AM Senator Flores in debate  
10:20:16 AM President Pro Tempe Simmons in debate  
10:26:11 AM Senator Farmer in debate  
10:29:00 AM Chair intervenes  
10:29:05 AM Senator Braynon interjects. Chair comments  
10:29:23 AM Senator Farmer continues in debate  
10:30:44 AM Senator Lee recognized as personal privilege with comments  
10:32:07 AM Senator Montford in debate  
10:33:17 AM Senator Hutson closes on the bill  
10:34:56 AM Roll call on CS/CS/SB 1794  
10:35:16 AM CS/CS/SB 1794 is reported favorably  
10:36:03 AM Tab 1 CS/SB 7010  
10:36:39 AM Senator Wright explains the bill  
10:36:46 AM Amendment 176398 is explained by Senator Wright  
10:37:34 AM Questions - none  
10:38:34 AM Testimony for amendment - none  
10:38:41 AM Debate - none  
10:38:48 AM Adopted with no objection  
10:38:54 AM Roy Clark, Legislative Director FL Dept Veterans Affairs, in support  
10:39:14 AM Mark Oglesby, Dir Legislative Dept Military Affairs, in support  
10:39:22 AM Debate by Senator Flores  
10:39:36 AM Senator Bradley in debate  
10:40:10 AM Senator Wright waives his close  
10:40:16 AM Roll call  
10:40:19 AM CS/SB 7010 is reported favorably  
10:40:40 AM Tab 3 CS/CS/SB 662  
10:40:56 AM Senator Wright explains the bill  
10:41:10 AM Amendment 254598 is explained  
10:41:34 AM Questions- none  
10:42:19 AM Bethany Swonson, Deputy Chief of Staff FL DOE, waives in support  
10:42:31 AM No debate  
10:42:35 AM Amendment 254598 is adopted  
10:42:43 AM Senator Montford in debate  
10:43:23 AM Senator Wright waives close  
10:43:25 AM Roll call  
10:43:39 AM CS/CS 662 is reported favorably  
10:43:56 AM Tab 4 Senator Wright explains the bill and the traveling amendment 957714  
10:44:53 AM SB 1492 is explained  
10:45:18 AM Amendment 730048 is explained  
10:45:46 AM Questions-none  
10:46:23 AM Meridith Stanfield, Dir Leg Affairs CFO Jimmy Patronis, in support of amendment  
10:46:41 AM No debate  
10:46:47 AM Senator waives close - the amendment is adopted  
10:46:56 AM Amendment 292600 by Senator Flores is explained  
10:47:36 AM Questions on A 292600 - Senator Brandes  
10:48:03 AM Senator Flores answers  
10:48:53 AM Senator Brandes with question

10:49:09 AM Senator Flores with response  
10:49:17 AM Senator Brandes follow up  
10:49:22 AM Senator Flores answers  
10:49:40 AM Richie Kidwell, Restoration Association of FL - Longwood FL, supports amendment  
10:50:10 AM Christine Ashburn, Citizens Property Insurance Corporation TLH, is against amendment  
10:51:03 AM Debate on A to A by Senator Brandes  
10:53:00 AM Senator Lee in debate  
10:54:04 AM Senator Wright closes on the Amendment  
10:54:31 AM Senator Flores closes on her amendment  
10:55:48 AM Amendment 292600 is adopted  
10:56:14 AM Back on bill as amended / public appearance  
10:56:17 AM Allison Hess Sitte Office of Insurance Regulation in support  
10:56:38 AM Chair recognizes Senator Lee for question to Ms. Hess  
10:56:47 AM Senator Lee with question to Ms. Hess  
10:57:53 AM Tasha Carter, FL Insurance Consumer Advocate -Tallahassee, in support  
10:59:42 AM Senator Lee in question for Ms. Carter  
11:00:01 AM Tasha Carter in response  
11:00:22 AM Meredith Stanfield, CFO Jimmy Patronis, in support  
11:00:47 AM Senator Lee with question for Ms. Stanfield  
11:01:01 AM Meredith Stanfield with response  
11:01:27 AM Senator Lee follow up question  
11:01:38 AM Ms. Stanfield answers  
11:02:20 AM Senator Lee in follow up  
11:02:30 AM Ms. Stanfield answers  
11:02:35 AM Senator Lee follow up  
11:02:51 AM Greg Thomas - Director in CFO Dept. of Financial Services Office responds  
11:03:27 AM Senator Lee follow up question  
11:03:38 AM Greg Thomas answers  
11:04:25 AM Senator Lee with question  
11:04:34 AM Greg Thomas responds  
11:05:36 AM Senator Lee follow up question  
11:06:05 AM Senator Lee continues questioning  
11:06:06 AM Greg Thomas Director of Financial Services  
11:06:20 AM Senator Lee follow up  
11:06:26 AM Greg Thomas responds  
11:06:56 AM Senator Lee follow up  
11:07:01 AM Greg Thomas responds  
11:07:16 AM Christine Ashburn, Chief Communications Leg & External Affairs - Citizens Property Insurance Corp, waives in support  
11:07:35 AM In Debate - Senator Brandes  
11:09:01 AM Senator Lee in debate  
11:10:58 AM Senator Farmer in debate  
11:14:13 AM Senator Wright closes on the bill  
11:14:28 AM Roll call SB 1492  
11:14:33 AM SB 1492 is reported favorably  
11:15:05 AM Tab 25 presented by Senator Hooper  
11:15:23 AM SB 7056 is explained  
11:15:36 AM Questions: none. No testimony.  
11:15:59 AM No debate. Waive close.  
11:16:05 AM Roll call  
11:16:12 AM SB 7056 is reported favorably  
11:16:30 AM Tab 7 by Senator Baxley  
11:16:52 AM CS/CS/SB 380 is explained  
11:17:08 AM Kenneth Pratt, Sr. VP Govt Affairs FL Bankers Association, in support  
11:17:17 AM Senator waives close. Roll call.  
11:17:22 AM CS/CS/SB 380 is reported favorably  
11:17:57 AM Tab 8 by Senator Baxley  
11:18:06 AM CS/SB 880 is explained  
11:18:11 AM No questions  
11:18:16 AM No appearance. No debate. Senator waives close.  
11:18:17 AM Roll call  
11:18:22 AM CS/SB 880 is reported favorably

11:18:45 AM Tab 9 by Senator Baxley  
11:18:55 AM CS/SB 1636 is explained  
11:19:09 AM Question- Senator Flores  
11:19:18 AM Senator Baxley answers  
11:19:32 AM No testimony  
11:19:36 AM No debate. Senator waives close.  
11:19:40 AM Roll call  
11:19:42 AM CS/SB 1636 is reported favorably  
11:20:12 AM Tab 6 by Senator Rouson  
11:20:29 AM CS/SB 368 is explained  
11:20:37 AM Questions- none  
11:21:11 AM Kaitlyn Bailey, RA Consulting - TBARTA, in support  
11:21:21 AM No debate. Senator waives close.  
11:21:28 AM Roll call  
11:21:31 AM CS/SB 368 is reported favorably  
11:21:55 AM Tab 5 by Senator Berman  
11:22:12 AM CS/SB 358 is explained  
11:22:42 AM Questions: none  
11:23:41 AM Martha Edenfield The Real Property, Probate Trust Law Section of the Florida Bar in support  
11:23:54 AM No debate. Senator waives close.  
11:24:00 AM Roll call  
11:24:03 AM CS/ SB 358 is reported favorably  
11:24:29 AM Tab 14 by Senator Harrell  
11:24:57 AM CS/CS/SB 1516 is explained  
11:26:05 AM Amendment 476992 is explained by Senator Harrell  
11:27:31 AM No questions  
11:27:51 AM John Harris, Maurer Equality FLorida, in support  
11:28:22 AM Amendment 476992 is adopted  
11:28:49 AM Amendment 522354 explained by Senator Harrell  
11:29:08 AM No questions, appearance, debate.  
11:29:22 AM Waives close.  
11:29:26 AM Amendment is adopted  
11:29:30 AM Amendment 664054 is explained  
11:29:56 AM With no objection, the Amendment is adopted  
11:30:00 AM Amendment 219292 is a technical amendment & is explained  
11:30:17 AM No questions, appearance, or debate.  
11:30:28 AM Amendment is adopted  
11:30:32 AM Back on Bill is amended  
11:30:38 AM Public appearance  
11:30:39 AM Louis Betz President more Transplants More Life Tampa in support  
11:30:48 AM Lauren Whirtenour Belz & Associates in support  
11:31:18 AM Ron Watson, Lobbyist Florida Renal Association, in support  
11:31:22 AM Missy Timmins, Lobbyist More Transplants More Life TLH, in support  
11:31:31 AM No debate  
11:31:36 AM Waives close  
11:31:38 AM Roll call  
11:31:56 AM CS/CS/SB 1516 is reported favorably  
11:32:22 AM Tab 15 by Senator Mayfield  
11:32:41 AM CS/CS/SB 646 is explained  
11:33:39 AM Questions: Senator Book with question  
11:34:41 AM Senator Mayfield answers  
11:35:08 AM Senator Brandes with questions  
11:35:20 AM Senator Mayfield answers  
11:35:31 AM Senator Brandes with follow up  
11:35:44 AM Senator Mayfield answers  
11:36:12 AM Senator Brandes follow up  
11:36:20 AM Senator Mayfield answers  
11:36:31 AM Senator Lee with question  
11:36:54 AM Senator Mayfield answers  
11:37:53 AM Senator Gibson with question  
11:38:24 AM Senator Mayfield responds  
11:38:47 AM Leader Gibson with follow up

11:39:01 AM Senator Mayfield responds  
11:40:08 AM Senator Montford  
11:40:14 AM Senator Mayfield answers  
11:40:49 AM Senator Montford with follow up question  
11:41:42 AM Senator Mayfield responds  
11:42:12 AM No appearance, no debate, waives close.  
11:42:22 AM Roll call  
11:42:26 AM CS/CS/SB 646 is reported favorably  
11:43:04 AM Take up tab 16  
11:43:06 AM CS/CS/SB 666 by Senator Mayfield  
11:43:31 AM CS/CS/SB 666 is explained  
11:43:51 AM Questions- none  
11:44:49 AM Amendments 363230 is explained by Senator Mayfield  
11:45:21 AM AA 347660 is explained by Senator Mayfield  
11:45:43 AM Questions- none  
11:45:48 AM No testimony, no debate, waive close.  
11:45:55 AM Amendment is adopted  
11:46:04 AM Questions on main amendment - none  
11:46:22 AM No debate.  
11:46:24 AM Amendment 363230 is adopted  
11:46:30 AM Back on bill as amended  
11:46:36 AM Frank Bernardino, Indian River County, in support  
11:47:04 AM Senator Lee in debate  
11:47:12 AM Waive close. Roll call.  
11:47:16 AM CS/CS/SB 666 is reported favorably  
11:47:45 AM Tab 17 by Senator Mayfield  
11:48:00 AM CS/CS/SB 1414 is explained  
11:48:08 AM Amendment 193948 by Senator Mayfield  
11:49:08 AM Senator Book with question  
11:49:56 AM Senator Mayfield answers  
11:50:33 AM No debate, waive close.  
11:50:38 AM Amendment is adopted  
11:50:42 AM Back on the bill as amended  
11:50:54 AM Phil Goss, President US Association of Reptile Keepers, is against  
11:52:40 AM Lane Stephens, Florida Airboat Association, Southeastern, waives in support  
11:52:56 AM Kate MacFall, Humane Society of the United States, in support  
11:53:09 AM Senator Brandes in debate  
11:53:47 AM Senator Lee in debate  
11:54:03 AM Waive close  
11:54:06 AM Roll call  
11:54:09 AM CS/CS/SB 1414 is reported favorably  
11:54:37 AM Tab 23 by Senator Stewart  
11:54:57 AM CS/SB 1018 is explained  
11:55:23 AM Questions: none  
11:56:23 AM Matt Butler, Lieutenant Orlando Orange County Sheriff, in support  
11:56:41 AM Melina Rayna Svanhild Farley-Barratt Leg Dir FL NOW Trenton in support  
11:57:08 AM Senator Lee in debate  
11:57:18 AM Waive close  
11:57:22 AM Roll call CS /SB 1018 is reported favorably  
11:58:19 AM Roll call for CS /SB 1018 is reported favorably  
11:58:20 AM Senator Simpson moves to TP Tab 13 CS/SB 500 by senator Harrell - adopted  
11:58:27 AM Senator Simpson moves to TP Tab 40 SJR 7062 Citizen Initiative - adopted  
11:58:30 AM Tab 10 CS/CS/SB 422 by Senator Perry  
11:59:01 AM Bill is explained, no questions.  
11:59:10 AM Dale Calhoun, Exec Dir Florida Propane Gas Association, in support  
11:59:15 AM Marc Dunbar, FL Assoc of RV Parks Campground FL Recreational Vehicle Trade Association, in support  
11:59:29 AM No debate, waive close.  
11:59:34 AM Roll call  
11:59:36 AM CS/CS/SB 422 is reported favorably  
12:00:04 PM Tab 11 by Senator Perry  
12:00:18 PM CS/SB 814 is explained  
12:00:26 PM Questions: Leader Gibson

12:00:35 PM Senator Perry answers  
12:00:54 PM Leader Gibson with follow up  
12:01:09 PM Senator Perry responds  
12:01:34 PM Leader Gibson with follow up  
12:01:46 PM Senator Perry answers  
12:02:21 PM Leader Gibson with follow up  
12:02:29 PM Senator Perry answers  
12:02:55 PM Leader Gibson  
12:03:14 PM Chair interjects with clarification on question.  
12:03:21 PM David Ash, Common Cause FL, in support  
12:03:38 PM Melina Rayna Svanhild Farley-Barratt of Trenton in support  
12:03:50 PM Leader Gibson in debate  
12:04:29 PM Senator Perry waives close  
12:04:36 PM Roll call  
12:04:41 PM CS/SB 814 is reported favorably  
12:05:06 PM Tab 12 by Senator Perry  
12:05:30 PM CS/SB 1696  
12:05:31 PM CS/SB 1696 is explained by Senator Perry  
12:05:40 PM Questions - none  
12:05:51 PM Late Amendment 704616 accepted and is explained  
12:06:02 PM No questions on amendment  
12:06:36 PM Robert Sefeik in support JSMP FASMED St. Augustine  
12:06:57 PM Debate-Senator Book  
12:07:19 PM Senator Montford in debate  
12:07:46 PM Senator Brandes in debate  
12:08:23 PM Chair in comment  
12:08:35 PM Waives close  
12:08:38 PM Amendment is adopted  
12:08:47 PM Back on the bill as amended  
12:08:55 PM No questions-public appearances  
12:09:44 PM Robert Sefeik, Exec Director Jacksonville Sports Medicine Program FASMED, in support  
12:10:19 PM Laurie Giordano, Fort Myers Zach Martin Foundation, in support  
12:14:21 PM Evan D Lubell, Attorney at Aloia, Roland Lubell & Morga, PLLC Fort Myers in support  
12:17:32 PM Senator Montford in debate  
12:18:32 PM Senator Perry closes on the bill  
12:18:40 PM Roll call  
12:18:45 PM CS/SB 1696 is reported favorably  
12:19:17 PM Tab 19 by Senator Diaz  
12:19:40 PM CS/SB 774 is explained  
12:20:07 PM Senator Farmer with question  
12:20:13 PM Senator Diaz responds  
12:22:31 PM Senator Farmer follow up  
12:22:47 PM Senator Diaz answers  
12:23:51 PM Senator Farmer with follow up  
12:24:00 PM Senator Diaz responds  
12:24:22 PM Senator Lee with questions  
12:24:56 PM Senator Diaz responds  
12:25:03 PM Senator Lee with follow up  
12:25:43 PM Senator Diaz answers  
12:25:54 PM Senator Lee with follow up  
12:26:48 PM Senator Diaz in response  
12:27:53 PM Senator Lee with further question  
12:28:05 PM Senator Diaz answers  
12:28:39 PM Senator Lee follows up  
12:28:49 PM Senator Diaz answers  
12:28:58 PM Senator Lee questions  
12:29:04 PM Senator Diaz answers  
12:29:40 PM Senator Lee  
12:29:46 PM Senator Diaz  
12:29:51 PM Senator Lee  
12:29:57 PM Senator Diaz responds  
12:30:29 PM Senator Lee follow up

12:30:36 PM Senator Diaz  
12:31:14 PM Senator Thurston with questions  
12:31:29 PM Senator Diaz responds  
12:32:13 PM Senator Thurston follows up  
12:33:14 PM Senator Diaz answers  
12:33:56 PM Senator Thurston  
12:34:55 PM Senator Diaz responds  
12:35:40 PM Senator Thurston with last question  
12:35:52 PM Senator Diaz responds  
12:36:57 PM Public appearance  
12:37:01 PM Kristin Whitaker Vice Chancellor State University System  
12:37:10 PM Majority of cards waiving  
12:37:18 PM Martin Balinsky is against  
12:37:19 PM Rich Templin Florida AFL-CIO speaks  
12:40:06 PM Dr Ana Ciereszko United Faculty of Miami Dade College against the bill  
12:41:58 PM Marshall Ogletree Exec Director United Faculty of FL is against  
12:43:43 PM Dr. Karen Moriar President United Faculty of FI is against  
12:44:36 PM Senator Lee has a question  
12:45:43 PM Dr. Moriar answers  
12:46:32 PM Senator Lee with follow up question  
12:46:43 PM Dr. Moriar responds  
12:47:37 PM Senator Thurston with question  
12:47:49 PM Dr. Moriar answers  
12:48:24 PM Senator Thurston with follow up  
12:48:34 PM Dr. Moriar responds  
12:49:11 PM Senator Farmer with question  
12:49:38 PM Dr. Moriar responds  
12:50:39 PM Senator Montford with question  
12:50:51 PM Dr. Moriar answers  
12:51:46 PM April D. Isaacs Teacher Kissimmee Osceola County Education Association against  
12:51:53 PM Bryan Porter Electrician Salt Springs against  
12:51:55 PM Charla S. fox Teacher Ft. Meyers against  
12:52:00 PM Caitlin Gille Assoc Professor Tampa against  
12:52:04 PM Mitzi Powell School Teacher Bowling Green against  
12:52:08 PM April Clark Public Educator Sebring against  
12:52:11 PM Kimbra Hanshaw Teacher Zolfo Springs against  
12:52:16 PM Laura Lovett-Estima District Records Clerk Fort Pierce against  
12:52:22 PM Eric Rodriguez Teacher Live Oak against  
12:52:23 PM Samantha Mrozowski Teacher Sebring against  
12:52:24 PM Colleen Peterson Teacher Port St. Lucie against  
12:52:33 PM John Bauman Lake Worth against  
12:52:33 PM Reginald Maddox Postal Clerk Tampa against  
12:52:34 PM Nicholas Mrozowski Teacher Sebring against  
12:52:35 PM Kevin Hanson Teacher Ocala against  
12:52:36 PM Jayne Walker Orlando against  
12:52:40 PM James C. Norutz Orlando against  
12:52:46 PM Frank Angel Boca Raton Against  
12:52:54 PM Lauryn Duckworth Teacher Ocala against  
12:52:57 PM Barbara Bridgett Teacher Royal Palm Beach against  
12:53:00 PM Kim Smith Tampa against  
12:53:02 PM Jason Sorenson Electrical Workers against  
12:53:03 PM Trevor Chapman Electrician Ocala against  
12:53:08 PM Andy Starling Bronson against  
12:53:10 PM Adam Campbell Lake Worth against  
12:53:14 PM William Lawson Field Representative Orlando against  
12:53:18 PM Marcus Dixon SEIV FLORIDA against  
12:53:24 PM Paul Hamilton Teacher Boynton Beach against  
12:53:26 PM Nicolette Owens High School Educator Fort Pierce against  
12:53:27 PM Lare Allen Middle School Dean of Students Kissimmee against  
12:53:27 PM Melissa Merriweather Instructional Paraprofessional Ocala against  
12:53:31 PM Michael Nelson Heavy Equipment Operator Ocala against  
12:53:37 PM Rob Kriete Pres Hillsborough Classroom Teachers Association Riverview against

12:53:41 PM Johnny A Green Riverview against  
12:53:46 PM Chris Rusnak Teacher Temple Terrace against  
12:53:50 PM Veronica McBurse Orlando against  
12:53:54 PM Natalie Hayes Longshoreman Orlando against  
12:53:59 PM Robert Chapman State Employee Plant City against  
12:54:11 PM Chenavia Smith Organizer Apopka against  
12:54:12 PM Cheryl Schrodeder Lakeland against  
12:54:13 PM Serena James Cosmetologist Orlando against  
12:54:18 PM Barry Tillis Orlando against  
12:54:24 PM Dr. Mitcheal Pearl Teacher Bradenton against  
12:54:24 PM William Wallin Teacher Parrish against  
12:54:27 PM Pam Denton Teacher TLH against  
12:54:29 PM Roger Simmermaker CEO President Consumer Patriotism Orlando against  
12:54:33 PM Marion Balinsky Professor Science Tallahassee United Faculty of FL, Tallahassee Community College  
12:54:39 PM Marcia Beasley Retired Riverview against  
12:54:40 PM Bob Ripper retired Labors #517 Georgetown for The People of USA against  
12:55:30 PM Senator Brandes in debate  
12:57:10 PM Senator Lee in debate  
12:58:16 PM Senator Farmer in debate  
12:59:56 PM Senator Rodriguez in debate  
1:00:58 PM Senator Thurston  
1:01:18 PM Senator Diaz closes on the bill  
1:02:17 PM Roll call on CS/SB 774  
1:03:18 PM CS/SB 774 is reported favorably  
1:04:00 PM Tab 35 by Senator Stargel  
1:04:57 PM No questions - go to Amendments.  
1:05:12 PM First amendment barcode 694008  
1:05:22 PM Senator Rodreiques withdraws this amendment.  
1:05:25 PM Amendment 957918 is explained by Senator Rodriguez  
1:06:39 PM No questions on the amendment:  
1:07:38 PM Melina Rayna Svanhild Farley-Barratt Leg Dir Trenton for FL NOW in support  
1:07:39 PM Jon Harris Maurer Public Policy Director TLH for Equality Florida in support  
1:07:41 PM Lakey Love TLH in support FL Coalition for Transgender Liberation  
1:07:43 PM Reverend Joe Parramore Pastor of Quincy in support  
1:07:47 PM Patti Sullivan Parental Rights.org Florida of Sebastion FL in support  
1:07:54 PM Vallie Osborne Parental Rights Ft. Walton Beach and Richard Osborne Parental Rights Ft. Walton both against  
1:08:08 PM No questions  
1:08:15 PM Stargel debates on the amendment. Senator Rodriguez waives close.  
1:08:24 PM Amendment not adopted  
1:08:37 PM Senator Rodriguez withdraws barcode 820782.  
1:08:45 PM Amendment 232476 - this has substitute amendment  
1:08:56 PM Late filed 888014 by Senator Stargel  
1:09:22 PM No questions on SA  
1:09:31 PM Melina Rayna Svanhild Farley-Barratt is against gives testimony  
1:10:27 PM No debate  
1:10:27 PM No additional testimony  
1:10:38 PM Senator Stargel closes  
1:10:46 PM Amendment 888014 is adopted  
1:10:52 PM Barcode 396696 by Senator Rodriguez is explained  
1:11:27 PM No questions  
1:12:17 PM John Harris Maurer Public Policy Dir TLH Equality FL in support  
1:12:23 PM Vallie Osborne Ft. Walton Beach Parental Rights is against  
1:12:28 PM Melina Rayna Svanhild Farley-Barratt Leg Dir Parental Rights Trenton for FL NOW in support  
1:12:34 PM Reverend Joe Parramore Pastor Quincy in support Parental Rights  
1:12:37 PM Lakey Love TLH FL Coalition for Transgender Liberation  
1:12:44 PM Patti Sullivan Parental Rights.org Florida of Sebastion FL is against  
1:12:49 PM Back on the amendment  
1:13:27 PM Debate by Senator Stargel to Senator Rodriguez amendment  
1:13:52 PM Senator Rodriguez closes on amendment  
1:14:32 PM Amendment is not adopted  
1:14:34 PM Back on the bill as amended

1:14:45 PM Questions on bill: Senator Lee  
1:15:04 PM Senator Stargel answers  
1:15:28 PM Senator Lee with question  
1:15:40 PM Senator Stargel  
1:15:46 PM Senator Lee follows up  
1:16:09 PM Senator Stargel  
1:16:17 PM Senator Lee follow up  
1:16:39 PM Senator Stargel answers  
1:17:04 PM Senator Lee follow up  
1:17:16 PM Senator Stargel  
1:18:32 PM Senator Lee  
1:18:42 PM Senator Stargel  
1:19:34 PM Senator Lee  
1:19:42 PM Senator Stargel  
1:20:25 PM Senator Lee continues  
1:20:39 PM Senator Stargel  
1:21:09 PM Senator Lee  
1:21:20 PM Senator Stargel responds  
1:22:00 PM Senator Lee continues  
1:22:12 PM Senator Stargel responds  
1:22:54 PM Chair: TP the bill- concerns need resolve for further discussion  
1:22:56 PM Tab 24 by Senator Taddeo  
1:23:37 PM CS/CS/SB 1508 is explained  
1:23:58 PM Questions - none  
1:24:02 PM No public testimony  
1:24:05 PM No debate  
1:24:08 PM Waives close  
1:24:11 PM Roll call  
1:24:13 PM CS/CS/SB 1508 is reported favorably  
1:24:44 PM Tab 31 by Senator Book  
1:25:57 PM CS/SB 698 is explained  
1:25:58 PM Questions: none. Amendment 362874  
1:26:06 PM Senator Book explains the amendment.  
1:26:49 PM Questions: none  
1:26:55 PM Take up late filed 145980 Senator Book explains it  
1:27:23 PM No questions  
1:27:29 PM Public appearance on amendment  
1:27:31 PM Charles Lockwood Dean USF health Tampa in support  
1:27:35 PM Kim McGlynn Govt Affairs TLH for USF health in support  
1:27:55 PM Amendment is adopted. Back on the bill as amended. No questions  
1:28:23 PM Andrew Shirvell Exec Dir Florida Voice for the Unborn TLH is against  
1:29:18 PM Matt Doran Donor Children.com Founder, Mechanical Engineer Melbourne for Donor conceived People in support  
1:30:18 PM Melina Rayna Svanhild Farley-Barratt Leg Dir Trenton FL NOW in support  
1:30:23 PM Chelsea Murphy State Dir. TLH Right on Crime in support  
1:30:24 PM Catherine Tang TLH for Donor Conceived People in support.  
1:32:12 PM Ken Kurepman Associate TLH for FL Conference Catholic Bishops with information  
1:33:12 PM No debate  
1:33:14 PM Roll call  
1:33:16 PM CS/SB 698 is reported favorably  
1:33:48 PM Tab 28 CS/SB 708  
1:34:03 PM Senator Hutson explains the bill  
1:34:20 PM Amendment 379430 is explained  
1:35:10 PM Senator Lee with question on amendment  
1:36:06 PM Senator Hutson responds  
1:36:12 PM Senator Lee  
1:36:16 PM Senator Hutson  
1:36:24 PM Senator Lee  
1:36:31 PM Senator Hutson  
1:37:05 PM Senator Lee  
1:37:12 PM Senator Hutson  
1:37:16 PM Senator Montford with question

1:37:43 PM Senator Hutson answers  
1:38:36 PM Senator Montford  
1:38:45 PM Senator Hutson  
1:39:52 PM Senator Montford  
1:39:57 PM Senator Hutson  
1:40:02 PM Senator Farmer with question  
1:40:14 PM Senator Hutson  
1:40:27 PM Senator Braynon with question  
1:41:02 PM Senator Hutson  
1:41:42 PM Senator Gibson  
1:41:51 PM Senator Hutson  
1:42:05 PM Leader Gibson with question  
1:42:24 PM Senator Hutson  
1:43:25 PM Senator Gibson  
1:43:30 PM Senator Hutson  
1:43:44 PM Senator Gibson  
1:43:52 PM Senator Hutson  
1:44:22 PM Concluding questions  
1:44:23 PM Cynthia Henderson EPIC Pharmacy TLH is against  
1:44:38 PM Delete all Debate-none  
1:44:46 PM Senator Hutson waives close  
1:44:48 PM Amendment is Adopted  
1:44:50 PM Michael Jackson Executive Vice President and CEO FL Pharmacy Association TLH is against  
1:44:50 PM Cynthia Henderson EPIC Pharmacy TLH is against  
1:44:50 PM Richard Pinsky Med Avail Technologies TLH in support  
1:44:50 PM Sal Nuzzo VP Policy The James Madison Institute TLH in support  
1:44:51 PM Jake Farmer Dir. Govt. Affairs Florida Retail Federation TLH in support  
1:45:24 PM Ivonne Fenandez Associate State Dir. AARP TLH in support/ Cesar Grazales Coalition Dir. Americans for Prosperity in support  
  
1:47:19 PM In debate  
1:48:37 PM Senator Braynon in debate  
1:49:19 PM Senator Montford  
1:50:06 PM Senator Lee in debate  
1:50:33 PM Senator Thurston in debate  
1:51:22 PM Waive close  
1:51:27 PM Roll call  
1:51:34 PM CS/SB 708 is reported favorably  
1:52:02 PM Tab 20 by Senator Diaz  
1:52:15 PM CS/SB 1050 is explained  
1:52:26 PM No questions  
1:52:28 PM Savannah Kelly External Affairs Dir. Volunteer Florida TLH in support  
1:52:35 PM Senator waives close  
1:52:40 PM Roll call CS/SB 1050 is reported favorably  
1:53:04 PM Tab 36 by Senator Montford  
1:53:17 PM Bill is explained  
1:53:36 PM No questions  
1:53:40 PM No testimony, no debate.  
1:53:43 PM Waives close  
1:53:47 PM Roll call  
1:53:51 PM SB 1272 is reported favorably  
1:54:12 PM Tab 41 by Senator Simmons  
1:54:30 PM SB 7064 is explained  
1:54:41 PM No questions  
1:55:04 PM No public testimony  
1:55:12 PM Debate  
1:55:16 PM None  
1:55:24 PM Waives close  
1:55:27 PM Roll call  
1:55:29 PM SB 7064 is reported favorably  
1:56:01 PM Tab 26 CS/CS/SB 512  
1:56:06 PM Senator Hutson explains the bill  
1:56:10 PM No questions

**1:56:27 PM** Tab 26 - Late amendment barcode 611058  
**1:56:43 PM** No objections  
**1:56:50 PM** Amendment is explained  
**1:56:55 PM** No questions  
**1:56:59 PM** No testimony  
**1:57:05 PM** No debate  
**1:57:08 PM** Waives close  
**1:57:10 PM** Roll call  
**1:57:15 PM** CS/CS/SB 512 is reported favorably  
**1:57:33 PM** Tab 39 by Senator Simpson  
**1:57:44 PM** SB 7052 is explained  
**1:57:48 PM** No questions  
**1:58:15 PM** TP this bill  
**1:58:19 PM** Tab 34 Senator FLores  
**1:58:38 PM** CS/CS/SB 1464 Underground Facility Damage Prevention and Safety  
**1:58:41 PM** Amendment 191488 technical changes only  
**1:58:54 PM** No questions  
**1:58:57 PM** Dale Calhoun Executive Director TLH Florida Natural Gas Association in support  
**1:59:16 PM** B.O. Jogerst TLH Associated Industries of Florida in support  
**1:59:19 PM** No debate, Waives close.  
**1:59:21 PM** Roll call  
**1:59:22 PM** SB 1464 is reported favorably  
**2:00:05 PM** Leader Passidomo moves the meeting adjourned. The meeting is adjourned.