

Tab 1	CS/SB 90 by CA, Brandes (CO-INTRODUCERS) Stewart, Gibson; (Identical to H 01411) Renewable Energy Source Devices					
Tab 2	CS/CS/SB 166 by CM, RI, Steube (CO-INTRODUCERS) Brandes, Hutson, Young; (Compare to CS/H 00141) Alcoholic Beverages					
431800	PCS	S	RCS	AP, AGG		04/20 07:34 PM
164174	A	S	WD	AP, Latvala	btw L.68 - 69:	04/20 08:31 AM
Tab 3	CS/SB 260 by CJ, Steube (CO-INTRODUCERS) Simmons; (Similar to CS/CS/H 00575) Threats to Kill or Do Bodily Injury					
887240	PCS	S	RCS	AP, ACJ		04/20 07:15 PM
Tab 4	CS/SB 368 by TR, Montford; (Compare to CS/CS/CS/H 00073) Transportation Facility Designations					
757218	PCS	S	RCS	AP, ATD		04/20 07:18 PM
116774	A	S	RCS	AP, Stargel	Delete L.130:	04/20 07:18 PM
Tab 5	CS/SB 400 by RI, Perry; (Similar to CS/CS/CS/H 00689) Alcoholic Beverages					
411446	PCS	S	RCS	AP, AGG		04/20 07:02 PM
338394	A	S	WD	AP, Perry	btw L.335 - 336:	04/20 07:02 PM
Tab 6	CS/SB 430 by BI, Bean (CO-INTRODUCERS) Flores; (Similar to CS/1ST ENG/H 00577) Discount Plan Organizations					
958488	A	S	RCS	AP, Bean	Delete L.187 - 190:	04/20 07:10 PM
Tab 7	CS/SB 446 by EP, Passidomo (CO-INTRODUCERS) Stargel; (Identical to 1ST ENG/H 00379) Underground Facilities					
Tab 8	CS/CS/SB 534 by GO, CA, Perry; (Identical to CS/CS/H 00599) Public Works Projects					
Tab 9	CS/CS/SB 554 by CM, RI, Young (CO-INTRODUCERS) Latvala; (Similar to H 00679) Craft Breweries					
Tab 10	SB 672 by Bean; (Similar to CS/CS/H 00101) Certificates of Nonviable Birth					
Tab 11	CS/CS/SB 674 by GO, HP, Bean; (Similar to CS/H 00103) Public Records/Nonviable Birth Records					
Tab 12	CS/SB 682 by HP, Stargel; (Compare to H 01059) Medicaid Managed Care					
219746	PCS	S	RCS	AP, AHS		04/20 07:23 PM
Tab 13	CS/SB 800 by BI, Broxson (CO-INTRODUCERS) Mayfield; (Similar to CS/CS/H 01191) Medication Synchronization					
743118	A	S	WD	AP, Broxson	Delete L.27 - 74:	04/19 08:02 AM
286812	A	S	RCS	AP, Broxson	Delete L.27 - 74:	04/20 02:36 PM
Tab 14	CS/SB 890 by ED, Bean (CO-INTRODUCERS) Montford; (Compare to CS/H 00907) Florida Endowment for Vocational Rehabilitation					
857170	PCS	S	RCS	AP, AED		04/20 07:25 PM

Tab 15	CS/SB 896 by ED, Simmons ; (Identical to H 00845) Direct-support Organization for the Florida Prepaid College Board						
188282	PCS	S	RCS	AP, AHE			04/20 07:43 PM

Tab 16	CS/SB 986 by BI, Stargel ; (Similar to CS/CS/H 00925) Department of Financial Services						
824078	PCS	S	RCS	AP, AGG			04/20 07:46 PM
934830	A	S L	WD	AP, Bean	Delete L.1943:		04/20 07:46 PM

Tab 17	SB 1222 by Bradley ; (Similar to H 00781) School Grades						
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Tab 18	CS/SB 1338 by EP, Book ; (Similar to CS/CS/H 07043) Vessels						
265472	D	S L	RCS	AP, Book	Delete everything after		04/20 07:28 PM

Tab 19	SB 1390 by Latvala (CO-INTRODUCERS) Simpson ; (Identical to H 01169) Transportation Facility Designations						
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Tab 20	CS/SB 1406 by HP, Powell (CO-INTRODUCERS) Passidomo, Baxley ; (Similar to CS/CS/CS/H 00785) Stroke Centers						
787872	PCS	S	RCS	AP, AHS			04/20 07:42 PM

Tab 21	SB 1416 by Young (CO-INTRODUCERS) Passidomo ; (Similar to CS/H 00493) Enhanced Safety for School Crossings						
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Tab 22	CS/SB 1452 by TR, Book ; (Similar to H 01161) Taximeters						
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Tab 23	CS/SB 1590 by EP, Latvala (CO-INTRODUCERS) Hutson, Mayfield, Stewart, Hukill ; (Similar to CS/CS/H 01213) Coastal Management						
516016	PCS	S	RCS	AP, AEN			04/20 07:48 PM

Tab 24	CS/SB 1600 by BI, Young (CO-INTRODUCERS) Broxson ; (Similar to CS/H 01205) Viatical Settlement Contracts						
164220	A	S	RCS	AP, Young	Delete L.109:		04/20 06:55 PM
885964	A	S	RCS	AP, Young	Delete L.177 - 179:		04/20 06:55 PM
549508	A	S	RCS	AP, Young	Delete L.190 - 256:		04/20 06:55 PM
322168	A	S	RCS	AP, Young	btw L.282 - 283:		04/20 06:55 PM

Tab 25	CS/CS/SB 1604 by GO, CJ, Bracy ; (Similar to CS/CS/H 01201) Department of Corrections						
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Tab 26	CS/SB 1726 by AG, Montford (CO-INTRODUCERS) Powell ; (Compare to CS/CS/H 01217) Industrial Hemp Pilot Projects						
862852	D	S	RCS	AP, Galvano	Delete everything after		04/20 07:31 PM

Tab 27	CS/SB 1210 by ED, Lee (CO-INTRODUCERS) Mayfield, Steube, Hutson, Artiles, Bean, Passidomo ; (Compare to CS/CS/1ST ENG/H 00989) Instructional Materials for K-12 Public Education						
822152	A	S L	RCS	AP, Lee	Delete L.324 - 325:		04/20 07:49 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Latvala, Chair
Senator Flores, Vice Chair

MEETING DATE: Thursday, April 20, 2017
TIME: 10:00 a.m.—1:00 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Latvala, Chair; Senator Flores, Vice Chair; Senators Bean, Benacquisto, Book, Bracy, Bradley, Brandes, Braynon, Gainer, Galvano, Gibson, Grimsley, Montford, Powell, Simmons, Simpson, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 90 Community Affairs / Brandes (Identical H 1411, Compare CS/CS/H 1351)	Renewable Energy Source Devices; Revising the definition of the term "renewable energy source device"; prohibiting the consideration of just value of property attributable to a renewable energy source device in determining the assessed value of any real property; exempting a renewable energy source device from the tangible personal property tax, etc. CU 02/07/2017 Favorable CA 02/21/2017 Fav/CS AFT 04/13/2017 Favorable AP 04/20/2017 Favorable	Favorable Yeas 18 Nays 0

With subcommittee recommendation – Finance and Tax

A proposed committee substitute for the following bill (CS/CS/SB 166) is available:

2	CS/CS/SB 166 Commerce and Tourism / Regulated Industries / Steube (Compare CS/H 141)	Alcoholic Beverages; Providing that the ownership, management, operation, or control of up to three vendor's licenses for the sale of alcoholic beverages by a designated Florida Craft Distillery is not prohibited under specified laws; requiring the Division of Alcoholic Beverages and Tobacco to issue permits to designated Florida Craft Distilleries to conduct certain tastings and sales; specifying authorized products for sale by craft distilleries; permitting craft distilleries to retain and renew a vendor's license under specified circumstances, etc. RI 02/08/2017 Fav/CS CM 04/03/2017 Fav/CS AGG 04/13/2017 Fav/CS AP 04/20/2017 Fav/CS	Fav/CS Yeas 18 Nays 0
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With subcommittee recommendation – General Government

A proposed committee substitute for the following bill (CS/SB 260) is available:

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Appropriations

Thursday, April 20, 2017, 10:00 a.m.—1:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/SB 260 Criminal Justice / Steube (Similar CS/H 575)	Threats to Kill or Do Bodily Injury; Prohibiting a person from making a threat to kill or do bodily injury in a writing or other record, or by posting or transmitting the threat in a specified manner; deleting requirements that a threat be sent to a specific recipient to be prohibited, etc. CJ 03/27/2017 Fav/CS ACJ 04/13/2017 Fav/CS AP 04/20/2017 Fav/CS RC	Fav/CS Yeas 18 Nays 0
With subcommittee recommendation – Criminal and Civil Justice			
<hr/> A proposed committee substitute for the following bill (CS/SB 368) is available:			
4	CS/SB 368 Transportation / Montford (Compare CS/CS/CS/H 73, CS/S 576, S 770)	Transportation Facility Designations; Providing honorary designations of various transportation facilities in specified counties; directing the Department of Transportation to erect suitable markers, etc. TR 02/21/2017 Fav/CS ATD 04/13/2017 Fav/CS AP 04/20/2017 Fav/CS	Fav/CS Yeas 18 Nays 0
With subcommittee recommendation – Transportation, Tourism, and Economic Development			
<hr/> A proposed committee substitute for the following bill (CS/SB 400) is available:			
5	CS/SB 400 Regulated Industries / Perry (Similar CS/CS/H 689, Compare CS/CS/S 388)	Alcoholic Beverages; Authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to appoint division personnel; revising the entities that may issue a certificate indicating an alcoholic beverage license applicant's place of business meets all of the sanitary requirements of the state; revising provisions authorizing a restaurant to allow a patron to remove a resealed wine container from a restaurant for off-premises consumption, etc. RI 02/22/2017 Temporarily Postponed RI 03/15/2017 Fav/CS AGG 04/13/2017 Fav/CS AP 04/20/2017 Fav/CS	Fav/CS Yeas 18 Nays 0
With subcommittee recommendation – General Government			

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, April 20, 2017, 10:00 a.m.—1:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	CS/SB 430 Banking and Insurance / Bean (Similar CS/H 577)	Discount Plan Organizations; Requiring third-party entities that contract with providers to administer or provide platforms for discount plans to be licensed as discount plan organizations; specifying periodic charge reimbursement and other requirements for discount plan organizations following membership cancellation requests; requiring discount plan organizations and marketers to provide specified disclosures to prospective members before enrollment, etc. BI 03/06/2017 Fav/CS AHS 03/21/2017 Favorable AP 04/20/2017 Fav/CS	Fav/CS Yeas 17 Nays 0
With subcommittee recommendation – Health and Human Services			
7	CS/SB 446 Environmental Preservation and Conservation / Passidomo (Identical H 379)	Underground Facilities; Revising the information that must be submitted to the Legislature annually by the board of directors of Sunshine State One-Call of Florida, Inc.; requiring excavators to call the 911 emergency telephone number under certain circumstances; specifying how certain civil penalties issued by state law enforcement officers shall be distributed, etc. EP 03/14/2017 Fav/CS CU 03/28/2017 Favorable ACJ 04/13/2017 Favorable AP 04/20/2017 Favorable	Favorable Yeas 17 Nays 0
With subcommittee recommendation – Criminal and Civil Justice			
8	CS/CS/SB 534 Governmental Oversight and Accountability / Community Affairs / Perry (Identical CS/CS/H 599)	Public Works Projects; Prohibiting the state and political subdivisions that contract for public works projects from imposing restrictive conditions on certain contractors, subcontractors, or material suppliers or carriers; prohibiting the state and political subdivisions from restricting qualified bidders from submitting bids, etc. CA 03/06/2017 Fav/CS GO 03/22/2017 Fav/CS AP 04/20/2017 Favorable	Favorable Yeas 11 Nays 7

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, April 20, 2017, 10:00 a.m.—1:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	CS/CS/SB 554 Commerce and Tourism / Regulated Industries / Young (Similar H 679)	Craft Breweries; Exempting certain vendors from specified delivery restrictions under certain circumstances; providing that certain manufacturers may transport malt beverages in vehicles owned or leased by certain persons other than the manufacturers, etc. RI 02/22/2017 Fav/CS CM 03/27/2017 Fav/CS AGG 04/13/2017 Temporarily Postponed AGG 04/18/2017 Favorable AP 04/20/2017 Favorable	Favorable Yeas 15 Nays 1
With subcommittee recommendation – General Government			
10	SB 672 Bean (Similar CS/CS/H 101, Compare CS/H 103, Linked CS/CS/S 674)	Certificates of Nonviable Birth; Creating the “Grieving Families Act”; requiring certain health care practitioners and health care facilities to electronically file a registration of nonviable birth within a specified timeframe; requiring the Department of Health to issue a certificate of nonviable birth within a specified timeframe upon the request of a parent, etc. HP 03/14/2017 Favorable JU 03/22/2017 Favorable AP 04/20/2017 Favorable	Favorable Yeas 18 Nays 0
11	CS/CS/SB 674 Governmental Oversight and Accountability / Health Policy / Bean (Similar CS/H 103, Compare CS/CS/H 101, Linked S 672)	Public Records/Nonviable Birth Records; Providing that a certificate of nonviable birth must contain information as required by the Department of Health; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. HP 03/14/2017 Fav/CS GO 03/27/2017 Fav/CS AP 04/20/2017 Favorable	Favorable Yeas 18 Nays 0
A proposed committee substitute for the following bill (CS/SB 682) is available:			
12	CS/SB 682 Health Policy / Stargel (Compare H 1059, H 7117, S 916)	Medicaid Managed Care; Requiring that nursing home facilities be prepared to provide confirmation within a specified timeframe to the Agency for Health Care Administration as to whether certain nursing home facility residents are candidates for certain services; providing that covered services for long-term care under the Medicaid managed care program are those specified in part IV of ch. 409, F.S.; providing that certain residents of nursing facilities are exempt from participation in the long-term care managed care program, etc. HP 03/27/2017 Fav/CS AHS 04/13/2017 Fav/CS AP 04/20/2017 Fav/CS	Fav/CS Yeas 18 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, April 20, 2017, 10:00 a.m.—1:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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With subcommittee recommendation – Health and Human Services

13	CS/SB 800 Banking and Insurance / Broxson (Similar CS/CS/H 1191)	Medication Synchronization; Requiring health insurers and health maintenance organizations, respectively, which issue or deliver certain policies or contracts to offer medication synchronization to allow insureds and subscribers to align refill dates for certain drugs at least once in a plan year; requiring such insurers and health maintenance organizations to implement a process for aligning such dates, etc. BI 03/27/2017 Fav/CS HP 04/03/2017 Favorable AP 04/20/2017 Fav/CS	Fav/CS Yeas 16 Nays 0
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A proposed committee substitute for the following bill (CS/SB 890) is available:

14	CS/SB 890 Education / Bean (Compare CS/H 907, S 2516)	Florida Endowment for Vocational Rehabilitation; Extending the date for future review and repeal of provisions governing the Florida Endowment for Vocational Rehabilitation, etc. ED 03/21/2017 Fav/CS AED 04/13/2017 Fav/CS AP 04/20/2017 Fav/CS	Fav/CS Yeas 18 Nays 0
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With subcommittee recommendation – Pre-K – 12 Education

A proposed committee substitute for the following bill (CS/SB 896) is available:

15	CS/SB 896 Education / Simmons (Identical H 845)	Direct-support Organization for the Florida Prepaid College Board; Extending the repeal date of the direct-support organization for the Florida Prepaid College Board, etc. ED 03/21/2017 Fav/CS AHE 04/13/2017 Fav/CS AP 04/20/2017 Fav/CS	Fav/CS Yeas 16 Nays 0
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With subcommittee recommendation – Higher Education

A proposed committee substitute for the following bill (CS/SB 986) is available:

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, April 20, 2017, 10:00 a.m.—1:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	CS/SB 986 Banking and Insurance / Stargel (Similar CS/CS/H 925, Compare CS/CS/H 911, CS/S 922)	Department of Financial Services; Replacing, within the Division of Treasury, the Treasury Investment Committee with the Treasury Investment Council; providing applicability of certain requirements relating to payments, warrants, and invoices to payments made in relation to certain agreements funded with federal or state assistance; requiring certification of boiler inspectors; authorizing the department to expend funds for professional development of its employees, etc. BI 03/14/2017 Fav/CS AGG 03/29/2017 Fav/CS AP 04/20/2017 Fav/CS	Fav/CS Yeas 16 Nays 0
With subcommittee recommendation – General Government			
17	SB 1222 Bradley (Similar H 781)	School Grades; Providing that a school exhibits a feeder pattern for the purpose of designating school grades if at least a majority of its students are scheduled to be assigned to the graded school, etc. ED 03/21/2017 Workshop-Discussed ED 03/27/2017 Favorable AED 04/13/2017 Favorable AP 04/20/2017 Favorable	Favorable Yeas 16 Nays 0
With subcommittee recommendation – Pre-K – 12 Education			
18	CS/SB 1338 Environmental Preservation and Conservation / Book (Similar CS/H 7043, Compare S 1542)	Vessels; Providing that vessels without an effective means of propulsion are at risk of becoming derelict under certain conditions; prohibiting anchoring or mooring of vessels and floating structures in certain areas; providing for boating-restricted areas to protect seagrasses on privately owned submerged lands upon application by the owner and commission approval; authorizing a local government to enact and enforce certain regulations for sewage disposal by certain vessels and floating structures, etc. EP 03/22/2017 Fav/CS AEN 04/13/2017 Favorable AP 04/20/2017 Fav/CS	Fav/CS Yeas 18 Nays 0
With subcommittee recommendation – Environment and Natural Resources			
19	SB 1390 Latvala (Identical H 1169)	Transportation Facility Designations; Providing an honorary designation of a certain transportation facility in a specified county, etc. TR 03/22/2017 Favorable ATD 04/13/2017 Favorable AP 04/20/2017 Favorable	Favorable Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, April 20, 2017, 10:00 a.m.—1:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
		With subcommittee recommendation – Transportation, Tourism, and Economic Development	
20	CS/SB 1406 Health Policy / Powell (Similar CS/CS/CS/H 785)	Stroke Centers; Directing the Agency for Health Care Administration to include hospitals that meet the criteria for acute stroke ready centers on a list of stroke centers; requiring the Department of Health to establish a statewide stroke registry, etc. HP 03/27/2017 Fav/CS AHS 04/13/2017 Not Considered AHS 04/18/2017 Fav/CS AP 04/20/2017 Fav/CS	Fav/CS Yeas 16 Nays 0
		With subcommittee recommendation – Health and Human Services	
21	SB 1416 Young (Similar CS/H 493)	Enhanced Safety for School Crossings; Requiring the Department of Transportation to evaluate the viability and cost of a uniform system of high-visibility markings and signage for designation of safe school crossings, subject to certain requirements; authorizing the department to consider in its evaluation implementation of new technology or innovations that enhance pedestrian and crosswalk visibility, etc. TR 03/28/2017 Favorable ATD 04/13/2017 Favorable AP 04/20/2017 Favorable	Favorable Yeas 18 Nays 0
		With subcommittee recommendation – Transportation, Tourism, and Economic Development	
22	CS/SB 1452 Transportation / Book (Similar H 1161, Compare CS/CS/H 467, CS/CS/S 498)	Taximeters; Deleting a provision exempting certain taximeters from specified permit requirements; deleting a provision prohibiting the annual permit fees for taximeters from exceeding \$50, etc. TR 03/28/2017 Fav/CS AEN 04/13/2017 Favorable AP 04/20/2017 Favorable	Favorable Yeas 18 Nays 0
		With subcommittee recommendation – Environment and Natural Resources	

A proposed committee substitute for the following bill (CS/SB 1590) is available:

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, April 20, 2017, 10:00 a.m.—1:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
23	CS/SB 1590 Environmental Preservation and Conservation / Latvala (Similar CS/CS/H 1213)	Coastal Management; Revising the criteria to be considered by the Department of Environmental Protection in determining and assigning annual funding priorities for beach management and erosion control projects; revising the list of projects that are included as inlet management projects; revising the ranking criteria to be used by the department to establish certain funding priorities for certain inlet-caused beach erosion projects; revising requirements for the comprehensive long-term management plan; requiring certain funds from the Land Acquisition Trust Fund to be used for projects that preserve and repair state beaches, etc. EP 03/22/2017 Fav/CS AEN 04/13/2017 Fav/CS AP 04/20/2017 Fav/CS	Fav/CS Yeas 16 Nays 0
With subcommittee recommendation – Environment and Natural Resources			
24	CS/SB 1600 Banking and Insurance / Young (Similar CS/H 1205)	Viatical Settlement Contracts; Providing additional prohibited acts related to viatical settlement contracts; extending the period in which viatical settlement contracts are void and unenforceable; providing that certain contracts, agreements, arrangements, or transactions relating to stranger-originated life insurance practices are void and unenforceable; authorizing a life insurer to contest policies obtained through such practices, etc. BI 03/27/2017 Fav/CS AP 04/20/2017 Fav/CS RC	Fav/CS Yeas 17 Nays 0
25	CS/CS/SB 1604 Governmental Oversight and Accountability / Criminal Justice / Bracy (Similar CS/CS/H 1201, Compare H 1203, Linked S 1526)	Department of Corrections; Authorizing the Department of Law Enforcement to issue an investigative demand seeking the production of an inmate's protected health information, medical records, or mental health records under certain circumstances; revising membership requirements for the safety and security review committee appointed by the Department of Corrections; revising scheduling requirements for inspections of state and private correctional institutions and facilities; revising the conditions on which an inmate may be granted a one-time award of 60 additional days of incentive gain-time by the department, etc. CJ 03/21/2017 Fav/CS GO 04/03/2017 Fav/CS AP 04/20/2017 Favorable	Favorable Yeas 18 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, April 20, 2017, 10:00 a.m.—1:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
26	CS/SB 1726 Agriculture / Montford (Compare CS/CS/H 1217)	Industrial Hemp Pilot Projects; Authorizing specified state universities to develop industrial hemp pilot projects in partnership with public, nonprofit, and private entities; requiring pilot projects to comply with rules adopted by the Department of Agriculture and Consumer Services; requiring the specified state universities to develop partnerships with certain entities; prohibiting projects from being funded with public funds, etc. AG 04/03/2017 Fav/CS AP 04/20/2017 Fav/CS	Fav/CS Yeas 18 Nays 0
27	CS/SB 1210 Education / Lee (Compare CS/CS/H 989)	Instructional Materials for K-12 Public Education; Requiring each district school board to adopt a process allowing parents or residents of the county to object to the use of specific instructional materials based on specified criteria; revising the requirements for school boards that adopt rules for the implementation of the district's instructional materials program; revising the standards that an instructional materials reviewer shall use, etc. ED 03/27/2017 Fav/CS AP 04/20/2017 Fav/CS	Fav/CS Yeas 16 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 90

INTRODUCER: Community Affairs Committee; and Senators Brandes and Stewart

SUBJECT: Renewable Energy Source Devices

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	Favorable
2.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
3.	<u>Fournier</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	Recommend: Favorable
4.	<u>Fournier</u>	<u>Hansen</u>	<u>AP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 90 provides property tax relief for owners of renewable energy source devices whether these devices are installed on residential or nonresidential real property or are taxed as tangible personal property.

The bill:

- Expands the definition of “renewable energy source device” to include various new devices, but excludes specified equipment that is involved in distribution and transmission of electricity;
- Expands the prohibition against considering the value of a renewable energy source device in determining the assessed value of real property used for residential purposes to all real property;
- Applies the prohibition to devices without regard to the date of installation, as opposed to the current prohibition, which only applies to devices that were installed (on residential property) on or after January 1, 2013; and
- Exempts renewable energy source devices from the tangible personal property tax.

These provisions expire December 31, 2037.

The Revenue Estimating Conference estimates that the bill reduces local ad valorem tax revenue by \$54.5 million on a recurring basis. Of that amount, \$21.3 million is a reduction in school

district revenue and \$33.2 million is a reduction in county, municipal, and special district revenue.

The bill takes effect January 1, 2018.

The bill may be a mandate requiring a two-thirds vote of the membership of the Senate. *See* Section IV. A. of the analysis.

II. Present Situation:

Ad Valorem Taxes

The State Constitution authorizes local government ad valorem taxes on real property and tangible personal property,¹ provides conditions and limitations upon the assessment of property for tax purposes,² and provides several ad valorem tax exemptions.³

Assessment Limitation for Renewable Energy Source Devices

Among the assessment limitations is authorization for the Legislature to prohibit the consideration of the installation of a renewable energy source device in the determination of the assessed value of real property used for residential purposes.⁴ The Legislature has implemented this prohibition in s. 193.624, F.S. The statute prohibits a property appraiser who is determining the assessed value of real property used for residential purposes from considering an increase in the just value of the property attributable to the installation of a renewable energy source device. The statute applies to a renewable energy source device installed on or after January 1, 2013, to new and existing residential real property. The statute defines the term “renewable energy source device” to mean any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

- Solar energy collectors, photovoltaic modules, and inverters;
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks;
- Rockbeds;
- Thermostats and other control devices;
- Heat exchange devices;
- Pumps and fans;
- Roof ponds;
- Freestanding thermal containers;
- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type;
- Windmills and wind turbines;
- Wind-driven generators;

¹ FLA. CONST. art. VII, s. 9.

² FLA. CONST. art. VII, s. 4.

³ FLA. CONST. art. VII, s. 3.

⁴ FLA. CONST. art. VII, s. 4(i).

- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy; and
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

Under current law, a renewable energy source device owned and installed on non-residential real property by the owner of the real property becomes a part of that real property and is taxable as real property. If a device is owned by someone other than the owner of the real property where it is installed, the device remains separate and distinct from the real property and the owner of the device is subject to tangible personal property tax on the device.

Tangible Personal Property Tax

“Tangible personal property” means all goods, chattels, and other articles of value (not including vehicles) capable of manual possession and whose chief value is intrinsic to the article itself.⁵ All tangible personal property is subject to ad valorem taxation unless expressly exempted.⁶ Household goods and personal effects,⁷ items of inventory,⁸ and up to \$25,000 of assessed value for each tangible personal property tax return⁹ are exempt from ad valorem taxation. Electric generating property owned by public utilities, including solar or renewable energy devices, is taxed as tangible personal property.¹⁰

Constitutional Amendment

In August 2016, voters approved a constitutional amendment to expand the exemption discussed above for renewable energy devices to all property, not just residential property.¹¹ The amendment authorizes the Legislature to exempt the assessed value of a solar or renewable energy source device from the tangible personal property tax, subject to conditions and limitations specified by general law.¹² For a solar or renewable energy source device owned by the real property owner and taxed as real property, the amendment authorizes the Legislature to prohibit the consideration of the installation of a solar or renewable energy source device for the purpose of ad valorem taxation of all real property, subject to conditions, limitations, and reasonable definitions specified by general law.¹³

The amendment also creates a schedule of implementation.¹⁴ The amendments to the State Constitution take effect January 1, 2018, and will expire December 31, 2037. Upon expiration,

⁵ Section 192.001(11)(d), F.S.

⁶ Section 196.001(1), F.S.

⁷ Section 196.181, F.S.

⁸ Section 196.185, F.S.

⁹ Section 196.183, F.S.

¹⁰ Office of Economic and Demographic Research, *Revenue Estimating Impact Conference Results for CS/SB 90*, (March 3, 2017), available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/pdf/Impact0303.pdf> (last visited March 9, 2017).

¹¹ Florida Department of State Division of Elections, available at <http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=93> (last visited April 10, 2017).

¹² FLA. CONST. art. VII, s. 3.

¹³ FLA. CONST. art. VII, s. 4.

¹⁴ FLA. CONST. art. XII, s. 34.

the schedule of implementation will be repealed and the text of the amended substantive sections will revert to that in existence on December 31, 2017. Any amendments to such text otherwise adopted are preserved and continue to operate to the extent that they are not dependent upon the portions of text that expire pursuant to the schedule.

III. Effect of Proposed Changes:

The bill amends s. 193.624, F.S., to expand the definition of “renewable energy source device” to include:

- Wiring, structural supports, and other components used as integral parts of a system; and
- Power conditioning and storage devices that store or use solar or geothermal energy.

However, the term does not include any equipment or structure that would be required in the absence of the renewable energy source device or that is on the distribution or transmission side of the point of interconnection where a renewable energy source device is interconnected to an electric utility’s distribution grid or transmission lines.

The bill also expands the application of the existing prohibition against the consideration of renewable energy devices in determining the assessed value of real property. The prohibition currently applies to a device installed on or after January 1, 2013 on residential property only; the bill expands coverage to all real property, and it will apply without regard to when installation occurred.

These amendments expire December 31, 2037, and the text of the amended subsections reverts to that in existence on December 31, 2017. Any amendments to the text enacted other than by this bill shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire.

The bill creates s. 196.182, F.S., to exempt a renewable energy source device from tangible personal property tax. This new section expires December 31, 2037.

The bill reenacts ss. 193.155 and 193.1554, F.S., to incorporate the amendments made to s. 193.624, F.S.

The bill takes effect January 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that, except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates

requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.^{15,16,17}

The mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill reduces local governments' authority to raise revenue by reducing ad valorem tax bases compared to the tax bases that would exist under current law. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature. Although this bill implements a constitutional amendment adopted by Florida voters, the amendment was permissive and authorizes, but does not require, the Legislature to act.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates that the bill will reduce local ad valorem tax revenue by \$54.5 million on a recurring basis. Of that amount, \$21.3 million is a reduction in school district revenue and \$33.2 million is a reduction in county, municipal, and special district revenue. In Fiscal Year 2018-2019, the bill will reduce school district revenue by \$16.4 million and county, municipal, and special district revenue by \$25.5 million.¹⁸

B. Private Sector Impact:

The exemptions from the ad valorem tax on real property and tangible personal property tax will reduce taxes for electric utilities and other property owners that install renewable energy devices to produce electricity. The exemptions may stimulate sales and leases of renewable energy source devices and encourage the development of renewable energy device leasing businesses.

¹⁵ FLA. CONST. art. VII, s. 18(d).

¹⁶ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 13, 2017).

¹⁷ Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 13, 2017).

¹⁸ Office of Economic and Demographic Research, *Revenue Estimating Impact Conference Results for CS/SB 90*, (March 3, 2017), available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0303.pdf (last visited March 9, 2017).

C. Government Sector Impact:

The bill applies to all renewable energy source devices, regardless of when they were installed, and thus, it applies to devices installed prior to the bill's effective date, January 1, 2018. Some local governments have pre-existing agreements with electric utilities that relied on the local governments receiving additional property tax revenue from the installation of renewable energy source devices; the effect of the bill on these local governments is uncertain, and depends on the provisions of any such agreement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 193.624 of the Florida Statutes.

This bill creates section 196.182 of the Florida Statutes.

This bill re-enacts the following sections of the Florida Statutes: 193.155(4)(a) and 193.1554(6)(a).

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Community Affairs on February 21, 2017:

Clarifies the definition of “renewable energy source device” by removing duplicative language and providing that the term does not include equipment involved in the distribution or transmission side of the point of interconnection where a renewable energy source device is interconnected to an electric utility’s grid or transmission lines.

B. Amendments:

None.

By the Committee on Community Affairs; and Senator Brandes

578-01926-17

201790c1

1 A bill to be entitled
 2 An act relating to renewable energy source devices;
 3 amending s. 193.624, F.S.; revising the definition of
 4 the term "renewable energy source device"; prohibiting
 5 the consideration of just value of property
 6 attributable to a renewable energy source device in
 7 determining the assessed value of any real property;
 8 deleting a provision relating to applicability as of a
 9 specified date; creating s. 196.182, F.S.; exempting a
 10 renewable energy source device from the tangible
 11 personal property tax; providing for expiration;
 12 reenacting ss. 193.155(4) (a) and 193.1554(6) (a), F.S.,
 13 relating to homestead assessments and nonhomestead
 14 residential property assessments, respectively, to
 15 incorporate the amendment made to s. 193.624, F.S., in
 16 references thereto; providing that specified
 17 amendments made by the act expire on a certain date;
 18 providing an effective date.

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

20 Section 1. Section 193.624, Florida Statutes, is amended to
 21 read:

22 193.624 Assessment of renewable energy source devices
 23 ~~residential property.~~-

24 (1) As used in this section, the term "renewable energy
 25 source device" means any of the following equipment that
 26 collects, transmits, stores, or uses solar energy, wind energy,
 27 or energy derived from geothermal deposits:
 28
 29

Page 1 of 4

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

578-01926-17

201790c1

30 (a) Solar energy collectors, photovoltaic modules, and
 31 inverters.
 32 (b) Storage tanks and other storage systems, excluding
 33 swimming pools used as storage tanks.
 34 (c) Rockbeds.
 35 (d) Thermostats and other control devices.
 36 (e) Heat exchange devices.
 37 (f) Pumps and fans.
 38 (g) Roof ponds.
 39 (h) Freestanding thermal containers.
 40 (i) Pipes, ducts, wiring, structural supports, refrigerant
 41 handling systems, and other ~~components~~ equipment used as
 42 integral parts of ~~to interconnect~~ such systems; however, such
 43 equipment does not include conventional backup systems of any
 44 type or any equipment or structure that would be required in the
 45 absence of the renewable energy source device.
 46 (j) Windmills and wind turbines.
 47 (k) Wind-driven generators.
 48 (l) Power conditioning and storage devices that store or
 49 use solar energy, wind energy, or energy derived from geothermal
 50 deposits to generate electricity or mechanical forms of energy.
 51 (m) Pipes and other equipment used to transmit hot
 52 geothermal water to a dwelling or structure from a geothermal
 53 deposit.
 54 The term does not include any equipment that is on the
 55 distribution or transmission side of the point of
 56 interconnection where a renewable energy source device is
 57 interconnected to an electric utility's distribution grid or
 58

Page 2 of 4

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

578-01926-17

201790c1

59 transmission lines.

60 (2) In determining the assessed value of real property ~~used~~
61 ~~for residential purposes, an increase in~~ the just value of the
62 property attributable to ~~the installation of~~ a renewable energy
63 source device may not be considered.

64 ~~(3) This section applies to the installation of a renewable~~
65 ~~energy source device installed on or after January 1, 2013, to~~
66 ~~new and existing residential real property.~~

67 Section 2. Section 196.182, Florida Statutes, is created to
68 read:

69 196.182 Exemption of renewable energy source devices.—A
70 renewable energy source device, as defined in s. 193.624, which
71 is considered tangible personal property is exempt from ad
72 valorem taxation. This section expires December 31, 2037.

73 Section 3. For the purpose of incorporating the amendment
74 made by this act to section 193.624, Florida Statutes, in a
75 reference thereto, paragraph (a) of subsection (4) of section
76 193.155, Florida Statutes, is reenacted to read:

77 193.155 Homestead assessments.—Homestead property shall be
78 assessed at just value as of January 1, 1994. Property receiving
79 the homestead exemption after January 1, 1994, shall be assessed
80 at just value as of January 1 of the year in which the property
81 receives the exemption unless the provisions of subsection (8)
82 apply.

83 (4) (a) Except as provided in paragraph (b) and s. 193.624,
84 changes, additions, or improvements to homestead property shall
85 be assessed at just value as of the first January 1 after the
86 changes, additions, or improvements are substantially completed.

87 Section 4. For the purpose of incorporating the amendment

578-01926-17

201790c1

88 made by this act to section 193.624, Florida Statutes, in a
89 reference thereto, paragraph (a) of subsection (6) of section
90 193.1554, Florida Statutes, is reenacted to read:

91 193.1554 Assessment of nonhomestead residential property.—

92 (6) (a) Except as provided in paragraph (b) and s. 193.624,
93 changes, additions, or improvements to nonhomestead residential
94 property shall be assessed at just value as of the first January
95 1 after the changes, additions, or improvements are
96 substantially completed.

97 Section 5. The amendments made by this act to s. 193.624(2)
98 and (3), Florida Statutes, expire December 31, 2037, and the
99 text of those subsections shall revert to that in existence on
100 December 31, 2017, except that any amendments to such text
101 enacted other than by this act shall be preserved and continue
102 to operate to the extent that such amendments are not dependent
103 upon the portions of text which expire pursuant to this section.

104 Section 6. This act shall take effect January 1, 2018.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-20-17

Meeting Date

90

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Richard Pinsky

Job Title _____

Address 106 E. college Ave #1200

Phone _____

Street

Tallahassee

Fla

State

Zip

Email _____

City

Speaking: For Against Information

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

Representing Florida Solar Energy Industry 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-20

Meeting Date

SB 90

Bill Number (if applicable)

Topic Solar

Amendment Barcode (if applicable)

Name Brian Lee

Job Title Legislative Director

Address 1203 Buckingham dr.

Phone 850-766-7309

Street

City

Tallahassee

State

FL

Zip

32308

Email brian@rethinkenergyflorida.org

Speaking: For Against Information

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

Representing Rethink Energy Action Fund

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)

4/20/17
Meeting Date

90
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 1674 UNIVERSITY PKWY #296
Street

Phone 941-323-2404

SARASOTA FL 34243
City State Zip

Email cullenasa@aol.com

Speaking: For Against Information

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

Representing SIERRA CLUB 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)

4/19/17

Meeting Date

SB90

Bill Number (if applicable)

Topic Renewable Energy

Amendment Barcode (if applicable)

Name JEFF SHARKEY

Job Title Capital Alliance Group

Address 106 E Colby Suite 640

Phone 850 224 1660

Street

City

State

Zip

FL

FL

32301

Email jsharkey@capalliance.com

Speaking: For Against Information

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

Representing Energy Freedom Coalition of America

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

4-20-2017
Meeting Date

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

SB 90
Bill Number (if applicable)

Topic Energy - Amendment 4 implementation Amendment Barcode (if applicable)

Name Susan Blickman

Job Title Florida Director

Address PO Box 310

Phone 727-7429003

Indian Rocks Bch FL 33785
City State Zip

Email susan@cleanenergy.org

Speaking: For Against Information

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

Representing Southern Alliance for Clean Energy

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)

April 20, 2017
Meeting Date

90
Bill Number (if applicable)

Topic Renewable Energy Source Devices

Amendment Barcode (if applicable)

Name Edgar G. Fernandez

Job Title _____

Address 201 W Park Ave SE100

Phone 786 255 5155

Tallahassee FL 32301
City State Zip

Email edgar@anfieldflorida.com

Speaking: For Against Information

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

Representing Renew Financial (PACE TRADER)

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)

4/20

Meeting Date

90

Bill Number (if applicable)

Topic Environment

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title Legislative Advocate

Address 540 Beverly Ct

Phone 772 209 1792

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 League of Women Voters 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)

April 26, 2017
Meeting Date

90
Bill Number (if applicable)

Topic Renewable Energy Source Devices

Amendment Barcode (if applicable)

Name JANET BOWMAN

Job Title DIRECTOR of Legislative Policy & Strategies

Address 236 E. 5th Avenue
Street

Phone (800) 251-9406

Tall FL 32801
City State Zip

Email Janet.Bowman@TNC.org

Speaking: For Against Information

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

Representing THE NATURE CONSERVANCY

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)

90

Meeting Date _____

Bill Number (if applicable) _____

Topic Solar Devices

Amendment Barcode (if applicable) _____

Name Sean Stafford

Job Title _____

Address 115 E. Park
Street

Phone 727-5006

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Alliance For Solar Choice

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)

4/20/17

Meeting Date

90

Bill Number (if applicable)

Topic Renewable Energy Source Devices

Amendment Barcode (if applicable)

Name Tim Parson

Job Title Director of Governmental Affairs

Address 113 E. College Ave.

Phone 850-910-2678

Street

Tallahassee FL 32302

City

State

Zip

Email tim@libertypartnersfl.com

Speaking: For Against Information

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

Representing Advanced Energy Economy

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)

4 120 2017
Meeting Date

Topic _____

Bill Number 90
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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)

4/20/17
Meeting Date

SB 90
Bill Number (if applicable)

Topic Amendment 4 Implementing Legislation

Amendment Barcode (if applicable)

Name Donna Simmons

Job Title Dir State Gov't Relations

Address 106 E College Ave
Street

Phone 850 681 6785

TLH FL 32312
City State Zip

Email dssimmons@tecoenergy.com

Speaking: For Against Information

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

Representing TECO Energy

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 Appropriations

BILL: PCS/CS/CS/SB 166 (431800)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Commerce and Tourism Committee; Regulated Industries Committee; and Senator Steube and others

SUBJECT: Alcoholic Beverages

DATE: April 19, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Oxamendi	McSwain	RI	Fav/CS
2. Askey	McKay	CM	Fav/CS
3. Davis	Betta	AGG	Recommend: Fav/CS
4. Davis	Hansen	AP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/CS/SB 166 increases the number of factory-sealed individual containers of distilled spirits that a craft distillery may sell in a face-to-face transaction with a consumer to a maximum of six containers of each brand. Current law permits the distillery to sell to consumers in a face-to-face transaction, per calendar year, two containers of each brand of distilled spirits, three containers of one brand and one container of a second brand, or four containers of a single brand.

The bill does not impact state revenues or expenditures.

The bill takes effect upon becoming law.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The division administers and enforces the Beverage Law.³

¹ Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² See s. 561.14, F.S.

³ Section 561.02, F.S.

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor (retailer) makes the ultimate sale to the consumer. Manufacturers may not sell directly to retailers or directly to consumers.

Generally, Florida follows the three-tier system. Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁴ Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.⁵ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.⁶

Tied House Evil Prohibitions

The system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.⁷ Activities are heavily regulated to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor.

Three-Tier System Exceptions

Exceptions to the three-tier regulatory system permit in-state wineries,⁸ breweries,⁹ and craft distilleries to sell directly to consumers.¹⁰ Restaurants licensed as vendors (brew pubs) may manufacture a limited quantity of malt beverages and sell directly to consumers for consumption on the licensed premises of a restaurant.¹¹

A winery, even if licensed as a distributor,¹² may be licensed as a vendor for a licensed premises situated on property contiguous to the manufacturing premises of the winery. A winery may not be issued more than three vendor licenses.¹³

⁴ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

⁵ Section 561.22, F.S.

⁶ Sections 563.022(14) and 561.14(1), F.S.

⁷ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, (June 2004) available at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf (last visited January 31, 2017).

⁸ See s. 561.221(1), F.S.

⁹ See s. 561.221(2), F.S.

¹⁰ See s. 565.03, F.S.

¹¹ See s. 561.221(3), F.S.

¹² Section 561.14(1), F.S., permits manufacturers to distribute at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.

¹³ See s. 561.221(1), F.S.

The division may issue permits for a certified Florida Farm Winery¹⁴ to conduct tasting and sales of its wines at Florida fairs, trade shows, expositions, and festivals. The permit is limited to the length of the event. The certified Florida Farm Winery is required to pay all entry fees and must have a winery representative present during the event.

Distilleries and Craft Distilleries

Section 565.01, F.S., defines the terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” to mean “that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.”

A “distillery” is a manufacturer of distilled spirits,¹⁵ and a “craft distillery” is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. A craft distillery must notify the division in writing of its decision to qualify as a craft distillery.¹⁶

Distilleries and craft distilleries pay the same amount of state license tax. All distilleries engaged solely in the business of manufacturing distilled spirits, or engaged in the business of blending and rectifying¹⁷ distilled spirits must pay a state license tax of \$4,000 for each plant or branch operating in Florida. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.¹⁸

There are 45 distilleries that produced fewer than 75,000 gallons of distilled spirits in 2016.¹⁹ The DBPR advises that 23 distilleries have provided the division with written notification that it qualifies as a craft distillery.

Retail Sales by Distilleries

A craft distillery is allowed to sell to consumers branded products²⁰ distilled on the licensed premises. The products must be in factory-sealed containers that are filled at the distillery and sold for off-premises consumption.²¹ The sales must occur at the distillery’s souvenir gift shop located on private property contiguous to the licensed distillery premises, and included on the sketch submitted with the license application.²² The division must approve any subsequent revisions to a craft distillery’s sketch to verify that the retail location operated by the craft

¹⁴ Section 599.004, F.S., establishes the Florida Farm Winery Program within the Department of Agriculture and Consumer Services. The requirements for certification include that a winery produce or sell less than 250,000 gallons of wine annually and that 60 percent of the wine produced is made from state agricultural products.

¹⁵ Section 565.03(1)(c), F.S.

¹⁶ Section 565.03(1)(b), F.S.

¹⁷ Merriam-Webster defines rectify as the purification (of alcohol) especially by repeated or fractional distillation, *available at* <http://www.merriam-webster.com/dictionary/rectify> (last visited April 13, 2017).

¹⁸ Section 565.03(3), F.S.

¹⁹ See 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 166, dated January 17, 2017 (on file with Senate Committee on Regulated Industries) at page 2.

²⁰ Section 565.03(1)(a), F.S., defines “branded product” to mean “any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations.”

²¹ Section 565.03(2)(c), F.S.

²² *Id.*

distillery is “owned or leased by the craft distillery and on property contiguous to the craft distillery’s production building.”²³ The craft distillery is not required to obtain, in addition to its manufacturer’s license, a vendor’s license in order to sell distilled spirits to consumers.

Sales must be in face-to-face transactions with consumers²⁴ who are making a purchase of no more than:

- Two individual containers of each branded product;
- Three individual containers of a single branded product and up to one individual container of a second branded product; or
- Four individual containers of a single branded product.²⁵

Each container sold must comply with the container limits in s. 565.10, F.S., which prohibits the sale and distribution of distilled spirits in any size container in excess of 1.75 liters or 59.18 ounces.²⁶

A craft distillery must report to the division within five business days after it has reached the 75,000-gallon production limit and cease making sales to consumers on the day after it reaches the production limit.²⁷

A craft distillery may not ship, arrange to ship, or deliver distilled spirits to consumers, but may ship, arrange to ship, or deliver distilled spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.²⁸

A craft distillery may not transfer its license or any ownership interest to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or country.²⁹ However, a craft distillery may be affiliated with another distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or in any other state, territory, or country.³⁰

A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the division.³¹

²³ *Id.*

²⁴ Section 565.03(2)(c)4., F.S.

²⁵ Section 565.03(2)(c)1., F.S.

²⁶ Section 565.03(2)(c)2., F.S.

²⁷ Section 565.03(2)(c)3., F.S.

²⁸ Section 565.03(2)(c)4., F.S.

²⁹ Section 565.03(2)(c)5., F.S.

³⁰ Section 565.03(2)(c)6., F.S.

³¹ Section 565.03(5), F.S. Section 565.12, F.S., requires manufactures and distributors to pay an excise tax on alcoholic beverages, with the tax rate per gallon depending on the percent of alcohol by volume of the beverage. Section 565.13, F.S., requires every distributor selling spirituous beverages within the state to pay the tax to the division monthly on or before the 10th day of the following month.

III. Effect of Proposed Changes:

The bill amends s. 565.03(2)(c), F.S., to increase the number of factory-sealed individual containers of distilled spirits that a craft distillery may sell in a face-to-face transaction with a consumer to a maximum of six containers of each brand.

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.

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

None.

B. Private Sector Impact:

The bill will likely have a positive impact on craft distilleries that sell their branded products directly to consumers from their gift shop.

C. Government Sector Impact:

The bill does not impact state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 565.03 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.)

Recommended CS/CS/CS by Appropriations Subcommittee on General Government on April 13, 2017:

The committee substitute increases the number of factory-sealed individual containers of distilled spirits that a craft distillery may sell in a face-to-face transaction with a consumer to a maximum of six containers of each brand.

The committee substitute removes the provisions from the bill that:

- Permit a craft distillery to own, manage, operate, or control up to three vendor licenses and to conduct tastings and sales at Florida fairs, trade shows, expositions, and festivals.
- Permit a certified Florida Farm Winery or a craft distillery to transfer wine or distilled spirits produced at the winery or distillery from their federal bonded space or non-bonded space at its licensed premises or storage areas to its vendor-licensed premises or approved sales room.
- Increase the maximum number of gallons that a distillery may produce to qualify as a craft distillery from 75,000 to 250,000 gallons per calendar year.
- Provide that a distillery is certified by the division as a “craft distillery” upon the distillery providing written notification of the distillery’s decision to qualify as a craft distillery.
- Permit a craft distillery to have one additional sales room located in the same county as the distillery’s production building, which shall be an extension of the craft distillery’s licensed premises, without requiring a vendor’s license for that additional location.
- Repeal the limitation on the number of individual containers of distilled spirits that a craft distillery may sell to consumers.
- Permit a craft distillery that reaches the production qualification limit of 250,000 gallons per calendar year to continue retail sales if the distillery has a vendor’s license for each craft distillery and additional sales room.
- Provide that a craft distillery may retain and renew its vendor’s license(s) if it exceeds the 250,000-gallon production limitation.
- Repeal the prohibition against the transfer of a craft distillery’s license or any ownership interest to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or country.
- Permit a craft distillery to conduct tastings of distilled spirits products at the premises of any vendor licensed for the sale of such products by package or for consumption on the premises.

CS/CS by Commerce and Tourism on April 3, 2017:

The committee substitute reinstates the requirement that a craft distillery’s sales must be for the consumer’s personal use and not for resale, which was removed from law in the original bill.

CS by Regulated Industries on February 8, 2017:

The committee substitute:

- Amends s. 561.221(1), F.S., to replace the term “certified” with the term “designated” in reference to a Florida craft distillery;
- Does not reduce the annual license tax for a craft distillery in s. 565.03(2)(a)1., F.S.;
- Revises s. 565.03(1)(b), F.S., to provide that a distillery is “designated” instead of “certified” by the division as a “craft distillery” when the distillery provides written notice to the division of its decision to qualify as a craft distillery; and
- Amends. 565.03(2)(c)3., F.S., to provide that a craft distillery may retain and renew its vendor’s licenses if it exceeds the production limitation to qualify as a craft distillery.

B. Amendments:

None.



164174

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/20/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment (with directory amendment)

Between lines 68 and 69
insert:

(d) 1. Notwithstanding subparagraph (c)1., prior to October 1, 2017, the division shall select by random public drawing one craft distillery for each of the five regions specified in subparagraph 2. Each craft distillery selected in such drawing may sell factory-sealed individual containers of spirits without a limitation on the number of such containers of each branded



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11 product that may be sold in face-to-face transactions with
12 consumers.

13 2. The five regions are:

14 a. Northwest Florida, consisting of Bay, Calhoun, Escambia,
15 Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon,
16 Liberty, Madison, Santa Rosa, Okaloosa, Taylor, Wakulla, Walton,
17 and Washington Counties.

18 b. Northeast Florida, consisting of Alachua, Baker,
19 Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist,
20 Hamilton, Lafayette, Levy, Marion, Nassau, Putnam, St. Johns,
21 Suwannee, and Union Counties.

22 c. Central Florida, consisting of Brevard, Citrus, Hardee,
23 Hernando, Indian River, Lake, Orange, Osceola, Pasco, Pinellas,
24 Polk, Seminole, St. Lucie, Sumter, and Volusia Counties.

25 d. Southwest Florida, consisting of Charlotte, Collier,
26 DeSoto, Glades, Hendry, Highlands, Hillsborough, Lee, Manatee,
27 Okeechobee, and Sarasota Counties.

28 e. Southeast Florida, consisting of Broward, Miami-Dade,
29 Martin, Monroe, and Palm Beach Counties.

30 3. A craft distillery may submit no more than one
31 application for inclusion in the random drawing for the region
32 in which the craft distillery is located. However, a craft
33 distillery that is a veteran business enterprise, as defined in
34 s. 295.187(3)(c), may have two entries in the random drawing for
35 its region.

36 4. The division shall adopt rules as necessary to implement
37 this paragraph.

38
39 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====



164174

40 And the directory clause is amended as follows:

41 Delete lines 9 - 10

42 and insert:

43 Section 1. Paragraph (c) of subsection (2) of section
44 565.03, Florida Statutes, is amended, and a new paragraph (d) is
45 added to that section to read:



576-03832-17

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to craft distilleries; amending s.

565.03, F.S.; revising the limitations on retail sales
by craft distilleries to consumers; providing an
effective date.

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

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

565.03 License fees; manufacturers, distributors, brokers,
sales agents, and importers of alcoholic beverages; vendor
licenses and fees; craft distilleries.-

(2)

(c) A craft distillery licensed under this section may sell
to consumers, at its souvenir gift shop, branded products
distilled on its premises in this state in factory-sealed
containers that are filled at the distillery for off-premises
consumption. Such sales are authorized only on private property
contiguous to the licensed distillery premises in this state and
included on the sketch or diagram defining the licensed premises
submitted with the distillery's license application. All sketch
or diagram revisions by the distillery shall require the
division's approval verifying that the souvenir gift shop
location operated by the licensed distillery is owned or leased
by the distillery and on property contiguous to the distillery's
production building in this state.



576-03832-17

1. A craft distillery may not sell any factory-sealed
individual containers of spirits except in face-to-face sales
transactions with consumers who are making a purchase of no more
than ~~six individual containers of each branded product.~~

~~a. Two individual containers of each branded product;~~

~~b. Three individual containers of a single branded product
and up to one individual container of a second branded product;~~
~~or~~

~~c. Four individual containers of a single branded product.~~

2. Each container sold in face-to-face transactions with
consumers must comply with the container limits in s. 565.10,
per calendar year for the consumer's personal use and not for
resale and who are present at the distillery's licensed premises
in this state.

3. A craft distillery must report to the division within 5
days after it reaches the production limitations provided in
paragraph (1) (b). Any retail sales to consumers at the craft
distillery's licensed premises are prohibited beginning the day
after it reaches the production limitation.

4. A craft distillery may not ship or arrange to ship any
of its distilled spirits to consumers and may sell and deliver
only to consumers within the state in a face-to-face transaction
at the distillery property. However, a craft distiller licensed
under this section may ship, arrange to ship, or deliver such
spirits to manufacturers of distilled spirits, wholesale
distributors of distilled spirits, state or federal bonded
warehouses, and exporters.

5. Except as provided in subparagraph 6., it is unlawful to
transfer a distillery license for a distillery that produces



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576-03832-17

57 75,000 or fewer gallons per calendar year of distilled spirits
58 on its premises or any ownership interest in such license to an
59 individual or entity that has a direct or indirect ownership
60 interest in any distillery licensed in this state; another
61 state, territory, or country; or by the United States government
62 to manufacture, blend, or rectify distilled spirits for beverage
63 purposes.

64 6. A craft distillery shall not have its ownership
65 affiliated with another distillery, unless such distillery
66 produces 75,000 or fewer gallons per calendar year of distilled
67 spirits on each of its premises in this state or in another
68 state, territory, or country.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/CS/SB 166

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Commerce and Tourism Committee; Regulated Industries Committee; and Senator Steube and others

SUBJECT: Alcoholic Beverages

DATE: April 21, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Oxamendi	McSwain	RI	Fav/CS
2. Askey	McKay	CM	Fav/CS
3. Davis	Betta	AGG	Recommend: Fav/CS
4. Davis	Hansen	AP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 166 increases the number of factory-sealed individual containers of distilled spirits that a craft distillery may sell in a face-to-face transaction with a consumer to a maximum of six containers of each brand. Current law permits the distillery to sell to consumers in a face-to-face transaction, per calendar year, two containers of each brand of distilled spirits, three containers of one brand and one container of a second brand, or four containers of a single brand.

The bill does not impact state revenues or expenditures.

The bill takes effect upon becoming law.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The division administers and enforces the Beverage Law.³

¹ Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² See s. 561.14, F.S.

³ Section 561.02, F.S.

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor (retailer) makes the ultimate sale to the consumer. Manufacturers may not sell directly to retailers or directly to consumers.

Generally, Florida follows the three-tier system. Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁴ Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.⁵ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.⁶

Tied House Evil Prohibitions

The system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.⁷ Activities are heavily regulated to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor.

Three-Tier System Exceptions

Exceptions to the three-tier regulatory system permit in-state wineries,⁸ breweries,⁹ and craft distilleries to sell directly to consumers.¹⁰ Restaurants licensed as vendors (brew pubs) may manufacture a limited quantity of malt beverages and sell directly to consumers for consumption on the licensed premises of a restaurant.¹¹

A winery, even if licensed as a distributor,¹² may be licensed as a vendor for a licensed premises situated on property contiguous to the manufacturing premises of the winery. A winery may not be issued more than three vendor licenses.¹³

⁴ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

⁵ Section 561.22, F.S.

⁶ Sections 563.022(14) and 561.14(1), F.S.

⁷ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, (June 2004) available at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf (last visited January 31, 2017).

⁸ See s. 561.221(1), F.S.

⁹ See s. 561.221(2), F.S.

¹⁰ See s. 565.03, F.S.

¹¹ See s. 561.221(3), F.S.

¹² Section 561.14(1), F.S., permits manufacturers to distribute at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.

¹³ See s. 561.221(1), F.S.

The division may issue permits for a certified Florida Farm Winery¹⁴ to conduct tasting and sales of its wines at Florida fairs, trade shows, expositions, and festivals. The permit is limited to the length of the event. The certified Florida Farm Winery is required to pay all entry fees and must have a winery representative present during the event.

Distilleries and Craft Distilleries

Section 565.01, F.S., defines the terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” to mean “that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.”

A “distillery” is a manufacturer of distilled spirits,¹⁵ and a “craft distillery” is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. A craft distillery must notify the division in writing of its decision to qualify as a craft distillery.¹⁶

Distilleries and craft distilleries pay the same amount of state license tax. All distilleries engaged solely in the business of manufacturing distilled spirits, or engaged in the business of blending and rectifying¹⁷ distilled spirits must pay a state license tax of \$4,000 for each plant or branch operating in Florida. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.¹⁸

There are 45 distilleries that produced fewer than 75,000 gallons of distilled spirits in 2016.¹⁹ The DBPR advises that 23 distilleries have provided the division with written notification that it qualifies as a craft distillery.

Retail Sales by Distilleries

A craft distillery is allowed to sell to consumers branded products²⁰ distilled on the licensed premises. The products must be in factory-sealed containers that are filled at the distillery and sold for off-premises consumption.²¹ The sales must occur at the distillery’s souvenir gift shop located on private property contiguous to the licensed distillery premises, and included on the sketch submitted with the license application.²² The division must approve any subsequent revisions to a craft distillery’s sketch to verify that the retail location operated by the craft

¹⁴ Section 599.004, F.S., establishes the Florida Farm Winery Program within the Department of Agriculture and Consumer Services. The requirements for certification include that a winery produce or sell less than 250,000 gallons of wine annually and that 60 percent of the wine produced is made from state agricultural products.

¹⁵ Section 565.03(1)(c), F.S.

¹⁶ Section 565.03(1)(b), F.S.

¹⁷ Merriam-Webster defines rectify as the purification (of alcohol) especially by repeated or fractional distillation, *available at* <http://www.merriam-webster.com/dictionary/rectify> (last visited April 13, 2017).

¹⁸ Section 565.03(3), F.S.

¹⁹ See 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 166, dated January 17, 2017 (on file with Senate Committee on Regulated Industries) at page 2.

²⁰ Section 565.03(1)(a), F.S., defines “branded product” to mean “any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations.”

²¹ Section 565.03(2)(c), F.S.

²² *Id.*

distillery is “owned or leased by the craft distillery and on property contiguous to the craft distillery’s production building.”²³ The craft distillery is not required to obtain, in addition to its manufacturer’s license, a vendor’s license in order to sell distilled spirits to consumers.

Sales must be in face-to-face transactions with consumers²⁴ who are making a purchase of no more than:

- Two individual containers of each branded product;
- Three individual containers of a single branded product and up to one individual container of a second branded product; or
- Four individual containers of a single branded product.²⁵

Each container sold must comply with the container limits in s. 565.10, F.S., which prohibits the sale and distribution of distilled spirits in any size container in excess of 1.75 liters or 59.18 ounces.²⁶

A craft distillery must report to the division within five business days after it has reached the 75,000-gallon production limit and cease making sales to consumers on the day after it reaches the production limit.²⁷

A craft distillery may not ship, arrange to ship, or deliver distilled spirits to consumers, but may ship, arrange to ship, or deliver distilled spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.²⁸

A craft distillery may not transfer its license or any ownership interest to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or country.²⁹ However, a craft distillery may be affiliated with another distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or in any other state, territory, or country.³⁰

A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the division.³¹

²³ *Id.*

²⁴ Section 565.03(2)(c)4., F.S.

²⁵ Section 565.03(2)(c)1., F.S.

²⁶ Section 565.03(2)(c)2., F.S.

²⁷ Section 565.03(2)(c)3., F.S.

²⁸ Section 565.03(2)(c)4., F.S.

²⁹ Section 565.03(2)(c)5., F.S.

³⁰ Section 565.03(2)(c)6., F.S.

³¹ Section 565.03(5), F.S. Section 565.12, F.S., requires manufactures and distributors to pay an excise tax on alcoholic beverages, with the tax rate per gallon depending on the percent of alcohol by volume of the beverage. Section 565.13, F.S., requires every distributor selling spirituous beverages within the state to pay the tax to the division monthly on or before the 10th day of the following month.

III. Effect of Proposed Changes:

The bill amends s. 565.03(2)(c), F.S., to increase the number of factory-sealed individual containers of distilled spirits that a craft distillery may sell in a face-to-face transaction with a consumer to a maximum of six containers of each brand.

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.

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

None.

B. Private Sector Impact:

The bill will likely have a positive impact on craft distilleries that sell their branded products directly to consumers from their gift shop.

C. Government Sector Impact:

The bill does not impact state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 565.03 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 Appropriations on April 20, 2017:

The committee substitute increases the number of factory-sealed individual containers of distilled spirits that a craft distillery may sell in a face-to-face transaction with a consumer to a maximum of six containers of each brand.

The committee substitute removes the provisions from the bill that:

- Permit a craft distillery to own, manage, operate, or control up to three vendor licenses and to conduct tastings and sales at Florida fairs, trade shows, expositions, and festivals.
- Permit a certified Florida Farm Winery or a craft distillery to transfer wine or distilled spirits produced at the winery or distillery from their federal bonded space or non-bonded space at its licensed premises or storage areas to its vendor-licensed premises or approved sales room.
- Increase the maximum number of gallons that a distillery may produce to qualify as a craft distillery from 75,000 to 250,000 gallons per calendar year.
- Provide that a distillery is certified by the division as a “craft distillery” upon the distillery providing written notification of the distillery’s decision to qualify as a craft distillery.
- Permit a craft distillery to have one additional sales room located in the same county as the distillery’s production building, which shall be an extension of the craft distillery’s licensed premises, without requiring a vendor’s license for that additional location.
- Repeal the limitation on the number of individual containers of distilled spirits that a craft distillery may sell to consumers.
- Permit a craft distillery that reaches the production qualification limit of 250,000 gallons per calendar year to continue retail sales if the distillery has a vendor’s license for each craft distillery and additional sales room.
- Provide that a craft distillery may retain and renew its vendor’s license(s) if it exceeds the 250,000-gallon production limitation.
- Repeal the prohibition against the transfer of a craft distillery’s license or any ownership interest to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or country.
- Permit a craft distillery to conduct tastings of distilled spirits products at the premises of any vendor licensed for the sale of such products by package or for consumption on the premises.

CS/CS by Commerce and Tourism on April 3, 2017:

The committee substitute reinstates the requirement that a craft distillery’s sales must be for the consumer’s personal use and not for resale, which was removed from law in the original bill.

CS by Regulated Industries on February 8, 2017:

The committee substitute:

- Amends s. 561.221(1), F.S., to replace the term “certified” with the term “designated” in reference to a Florida craft distillery;
- Does not reduce the annual license tax for a craft distillery in s. 565.03(2)(a)1., F.S.;
- Revises s. 565.03(1)(b), F.S., to provide that a distillery is “designated” instead of “certified” by the division as a “craft distillery” when the distillery provides written notice to the division of its decision to qualify as a craft distillery; and
- Amends. 565.03(2)(c)3., F.S., to provide that a craft distillery may retain and renew its vendor’s licenses if it exceeds the production limitation to qualify as a craft distillery.

B. Amendments:

None.

By the Committees on Commerce and Tourism; and Regulated Industries; and Senators Steube, Brandes, Hutson, and Young

577-03328-17

2017166c2

1 A bill to be entitled
 2 An act relating to alcoholic beverages; amending s.
 3 561.221, F.S.; providing that the ownership,
 4 management, operation, or control of up to three
 5 vendor's licenses for the sale of alcoholic beverages
 6 by a designated Florida Craft Distillery is not
 7 prohibited under specified laws; requiring the
 8 Division of Alcoholic Beverages and Tobacco to issue
 9 permits to designated Florida Craft Distilleries to
 10 conduct certain tastings and sales; requiring such
 11 distilleries to pay entry fees and have a
 12 representative present during certain events;
 13 authorizing the transfer of wine and distilled spirits
 14 to vendors by specified wineries and distilleries
 15 under certain circumstances; requiring the division to
 16 approve certain storage areas; requiring wineries and
 17 distilleries to report all such transfers to the
 18 division and to include them in monthly excise tax
 19 payments; amending s. 565.03, F.S.; redefining the
 20 term "craft distillery"; specifying authorized
 21 products for sale by craft distilleries; providing
 22 limitations on retail sales by craft distilleries to
 23 consumers; permitting craft distilleries to retain and
 24 renew a vendor's license under specified
 25 circumstances; authorizing craft distilleries to
 26 transfer distilled spirits under certain conditions;
 27 requiring the division to approve certain storage
 28 areas; requiring distilleries to report all such
 29 transfers to the division and to include them in

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30 monthly excise tax payments; deleting certain
 31 prohibitions on the transfer of a distillery license
 32 and affiliated ownership; authorizing craft
 33 distilleries to apply for a sales room location under
 34 certain circumstances; amending s. 565.17, F.S.;
 35 authorizing craft distilleries to conduct tastings
 36 under certain circumstances; providing an effective
 37 date.

38
 39 Be It Enacted by the Legislature of the State of Florida:

40
 41 Section 1. Subsection (1) of section 561.221, Florida
 42 Statutes, is amended to read:

43 561.221 Licensing of manufacturers and distributors as
 44 vendors and of vendors as manufacturers; conditions and
 45 limitations.—

46 (1) (a) Nothing contained in s. 561.22, s. 561.42, or any
 47 other provision of the Beverage Law prohibits the ownership,
 48 management, operation, or control of not more than three
 49 vendor's licenses for the sale of alcoholic beverages by a
 50 manufacturer of wine or a designated Florida Craft Distillery
 51 ~~who is~~ licensed and engaged in the manufacture of wine or
 52 distilled spirits in this state, even if such manufacturer is
 53 also licensed as a distributor; provided that ~~ne~~ such vendor's
 54 license is not ~~shall be~~ owned, managed, operated, or controlled
 55 by any licensed manufacturer of wine or any craft distillery
 56 unless the licensed premises of the vendor are situated on
 57 property contiguous to the manufacturing premises of the
 58 licensed manufacturer of wine or distilled spirits or in its

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59 sales room pursuant to s. 565.03.

60 (b) The Division of Alcoholic Beverages and Tobacco shall
61 issue permits to a certified Florida Farm Winery or a designated
62 Florida Craft Distillery to conduct tasting and sales of wine or
63 distilled spirits produced by certified Florida Farm Wineries or
64 designated Florida Craft Distilleries at Florida fairs, trade
65 shows, expositions, and festivals. The certified Florida Farm
66 Winery or designated Florida Craft Distillery shall pay all
67 entry fees and shall have a winery or distillery representative
68 present during the event. The permit is limited to the length of
69 the event.

70 (c) A certified Florida Farm Winery or designated Florida
71 Craft Distillery may transfer wine or distilled spirits produced
72 at such winery or distillery, respectively, out of its federal
73 bonded space or nonbonded space at its licensed premises or
74 storage areas to its vendor's licensed premises or approved
75 sales room. The division shall approve the storage areas,
76 provided that each is included in the winery's or distillery's
77 current state tax bond. All such transfers of wine or distilled
78 spirits shall be reported to the division pursuant to s. 561.55
79 and included in the winery's or distillery's excise tax payment
80 to the state each month.

81 Section 2. Paragraph (b) of subsection (1) and paragraph
82 (c) of subsection (2) of section 565.03, Florida Statutes, are
83 amended to read:

84 565.03 License fees; manufacturers, distributors, brokers,
85 sales agents, and importers of alcoholic beverages; vendor
86 licenses and fees; craft distilleries.—

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

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88 (b) "Craft distillery" means a licensed distillery that
89 produces 250,000 ~~75,000~~ or fewer gallons per calendar year of
90 distilled spirits on its premises and is designated as a craft
91 distillery by ~~has notified~~ the division upon notification in
92 writing of its decision to qualify as a craft distillery.

93 (2) (c) A craft distillery licensed under this section may
94 sell to consumers, at its souvenir gift shop, branded products
95 distilled and bottled on its premises in this state in factory-
96 sealed containers approved for sale ~~that are filled at the~~
97 ~~distillery~~ for off-premises consumption. Such sales are
98 authorized only on ~~private~~ property owned or leased by the
99 distillery which is contiguous to the licensed distillery
100 premises and at one other approved sales room located in the
101 same county as the distillery's production building which shall
102 be an extension of the craft distillery's licensed premises ~~in~~
103 ~~this state~~ and included on the sketch or diagram defining the
104 licensed premises submitted with the distillery's license
105 application. All sketch or diagram revisions by the distillery
106 shall require local zoning approval and the division's approval
107 verifying that the souvenir gift shop location and all areas
108 used and operated by the licensed distillery ~~are~~ ~~is~~ owned or
109 leased by the distillery and on property contiguous to the
110 distillery's production building in this state or within the
111 extended licensed premises.

112 1. A craft distillery licensed under this section may not
113 sell any factory-sealed individual containers of spirits except
114 in face-to-face sales transactions at the craft distillery's
115 licensed premises with consumers who are making a purchase ~~of no~~
116 ~~more than:~~

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117 ~~a. Two individual containers of each branded product,~~
 118 ~~b. Three individual containers of a single branded product~~
 119 ~~and up to one individual container of a second branded product,~~
 120 ~~or~~
 121 ~~c. Four individual containers of a single branded product.~~

122 2. Each container sold in face-to-face transactions with
 123 consumers must comply with the container limits in s. 565.10,
 124 ~~per calendar year~~ for the consumer's personal use and not for
 125 resale and ~~who are present at the distillery's licensed premises~~
 126 ~~in this state.~~

127 3. A craft distillery licensed under this section must
 128 report to the division within 5 days after it reaches the
 129 production limitations provided in paragraph (1)(b). Any retail
 130 sales to consumers at the craft distillery's licensed premises
 131 are prohibited beginning the day after it reaches the production
 132 limitation unless it has been issued a vendor's license at each
 133 craft distillery and additional sales room authorized in s.
 134 561.221. Notwithstanding any of the provisions of this section
 135 or s. 561.221, a craft distillery which holds a vendor's license
 136 may retain and renew such license, if such craft distillery
 137 exceeds the production limitation in paragraph (1)(b).

138 4. A craft distillery licensed under this section may not
 139 ship or arrange to ship any of its distilled spirits to
 140 consumers and may sell and deliver only to consumers within the
 141 state in a face-to-face transaction at the distillery property.
 142 However, a craft distiller licensed under this section may ship,
 143 arrange to ship, or deliver such spirits to manufacturers of
 144 distilled spirits, wholesale distributors of distilled spirits,
 145 state or federal bonded warehouses, and exporters.

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146 5. A craft distillery may transfer distilled spirits it
 147 manufactures from its federal bonded space or nonbonded space at
 148 its licensed premises or storage areas to its souvenir gift shop
 149 and additional sales room. The division shall approve all
 150 storage areas requested by the craft distillery which are
 151 included in its current state bond. All such transfers of
 152 distilled spirits shall be reported to the division pursuant to
 153 s. 561.55 and included in the excise tax payment due the state
 154 ~~Except as provided in subparagraph 6., it is unlawful to~~
 155 ~~transfer a distillery license for a distillery that produces~~
 156 ~~75,000 or fewer gallons per calendar year of distilled spirits~~
 157 ~~on its premises or any ownership interest in such license to an~~
 158 ~~individual or entity that has a direct or indirect ownership~~
 159 ~~interest in any distillery licensed in this state; another~~
 160 ~~state, territory, or country; or by the United States government~~
 161 ~~to manufacture, blend, or rectify distilled spirits for beverage~~
 162 ~~purposes.~~

163 6. A craft distillery may include a sales room location
 164 authorized by this subsection on its original license
 165 application or by an amendment to its license application on
 166 forms prescribed by the division shall not have its ownership
 167 ~~affiliated with another distillery, unless such distillery~~
 168 ~~produces 75,000 or fewer gallons per calendar year of distilled~~
 169 ~~spirits on each of its premises in this state or in another~~
 170 ~~state, territory, or country.~~

171 Section 3. Section 565.17, Florida Statutes, is amended to
 172 read:
 173 565.17 Beverage tastings by distributors and vendors.—A
 174 licensed distributor of spirituous beverages, or any vendor or

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175 craft distillery, is authorized to conduct spirituous beverage
176 tastings upon any licensed premises authorized to sell
177 spirituous beverages by package or for consumption on premises
178 without being in violation of s. 561.42, provided that the
179 conduct of the spirituous beverage tasting shall be limited to
180 and directed toward the general public of the age of legal
181 consumption.

182 Section 4. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

April 13, 2017

The Honorable Jack Latvala
Florida Senate
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Latvala,

I am writing this letter because several of my bills have been referred to the Senate Appropriations Committee. I am respectfully requesting that you place the following bills on your committee's calendar for the next committee week:

- SB 166 – Alcoholic Beverages
- SB 260 – Threats to Kill or Do Bodily Injury
- SB 330 – Local Business Taxes
- SB 748 – Florida Court Education Council

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in blue ink, appearing to read "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/17

Meeting Date

1164

Bill Number (if applicable)

Topic Craft Distilleries

Amendment Barcode (if applicable)

Name Caroyn Johnson

Job Title Policy Director

Address 134 S Bronough St

Phone 521-1200

Street

Tallahassee

City

State

Zip

Email cjohnson@flchamber.com

Speaking: For Against Information

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

Representing FL Chamber of Commerce

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)

20 APR 17

Meeting Date

SB166

Bill Number (if applicable)

Topic ALCOHOLIC BEVERAGES

Amendment Barcode (if applicable)

Name RICHARD TURNER

Job Title GEN COUNSEL ; V.P. GOVERNMENTAL RELATIONS

Address 230 S. ADAMS ST
Street

Phone 850. 224. 2250

TALLAHASSEE FL 32301
City State Zip

Email rturner@flc.org

Speaking: For Against Information

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

Representing FLORIDA RESTAURANT & LODGING 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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/CS/SB 260 (887240)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senator Steube

SUBJECT: Threats to Kill or Do Bodily Injury

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Mcauliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 260 amends section 836.10, Florida Statutes, to delete the current statutory requirements that a specific person be directly threatened by a person making a threat through means of a letter, inscribed communication, or electronic communication, and that the specific person actually receive the threat.

The bill:

- Reorganizes the elements of the offense so that section 836.10(1), Florida Statutes, provides for a violation of the statute if a threat to kill or do bodily injury to another is sent, posted, or transmitted in a manner that would allow another person to view the threat. This clarifies that a more general threat is included within the acts that violate section 836.10, Florida Statutes.
- Creates a definition for the term “electronic record.”
- Provides that a juvenile who violates section 836.10, Florida Statutes, commits a first degree misdemeanor (rather than the existing second degree felony).
- Adds a new exception, for a violation of section 836.10, Florida Statutes, to the general rule that a misdemeanor must be committed in a law enforcement officer’s presence in order for a warrantless arrest to occur.

This bill makes section 836.10, Florida Statutes, applicable to circumstances where a person transmits a threat to kill or do bodily injury to another in a more public forum than the current law contemplates.

On March 2, 2017, the Criminal Justice Impact Conference considered HB 575, the substantive provisions of which were identical to SB 260 in its original form. The Conference adopted a “positive indeterminate” estimate of the fiscal impact of the bill on prison beds, meaning that although there may be additional inmates incarcerated in state prison resulting from this bill the number is unquantifiable.

The bill is effective October 1, 2017.

II. Present Situation:

When s. 836.10, F.S., was enacted in 1913, social media was limited to the “pen and paper” written word, the newspaper, and possibly the radio.

Having been amended in 2010¹ to add “electronic communication,” s. 836.10, F.S., currently prohibits a person from:

- Writing or composing and sending to any person:
 - A letter,
 - Inscribed communication, or
 - Electronic communication,
- Containing a threat to kill or do bodily injury to:
 - The person to whom the letter or communication was sent, or
 - Any member of the person’s family.²

The act of “sending” under the statute requires two events – sending the communication to a particular person *and* receipt of the communication by the person being threatened.³

When the target of the threat is not necessarily a particular individual, but more random in nature, it is then that the application of the statute breaks down, particularly as related to social media.

Social Media

Studies indicate that social media sites and other apps are widely used to communicate with other people and to find information. For example, recent publications by the Pew Research Center report that:

- 86 percent of Americans use the internet;⁴

¹ Chapter 2010-51, Laws of Florida.

² A violation of s. 836.10, F.S., is a second degree felony, punishable by up to 15 years in prison and a fine of up to \$10,000. ss. 775.082, 775.083, and 775.084, F.S.

³ *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016) citing *State v. Wise*, 664 So.2d 1028, 1030 (Fla. 2nd DCA 1995).

⁴ Pew Research Center, November 2016, “Social Media Update,” pages 1-2.

- Of the surveyed 1,520 adults in one study, 79 percent use Facebook, 32 percent use Instagram, 31 percent use Pinterest, 29 percent use LinkedIn, and 24 percent use Twitter;⁵ and
- In a survey of 1,060 teens ages 13-17 and their parent or guardian, when asked about the use of specific sites, 89 percent of all teens reported the use of at least one of the sites and 71 percent used 2 or more of the sites.⁶

Examples of Random School Threats Using E-Mail

In late 2015, there was a rash of e-mailed hoax threats against schools across the country that began in New York City and Los Angeles.⁷ The New York and Los Angeles threats were nearly identically worded, threatening the use of bombs, nerve gas, and rifles, and routed through a server in Frankfurt, Germany, apparently by the same person.⁸ A few days later, similar threats were directed at schools in Florida.⁹ Social media and other electronic forms of communication were used in at least 35 percent of the violent threats to schools in one recent study covering half the 2013-14 school year in 43 states.¹⁰

Case Law Applying Current Statute

In a 2016 court decision, a juvenile's disposition under s. 836.10, F.S., for posting written threats to kill or do bodily injury on Twitter¹¹ was reversed.¹² The juvenile made a series of public posts on Twitter over the span of several days threatening to "shoot up" his school.¹³ The tweets were discovered by an out-of-state watchdog group who reported the threats to local police. Local police later contacted the juvenile's school officials informing them of the threats.

The Second District Court of Appeals found that because the juvenile publicly posted the tweets, rather than directly sending them to any student or school official, the receipt of the threats by

⁵ Pew Research Center, November 2016, "Social Media Update," pages 1-2.

⁶ Pew Research Center, April 2015, "Teen, Social Media and Technology Overview 2015," pages 7 and 25.

⁷ "Los Angeles and New York Differ in Their Responses to a Terrorism Threat," The New York Times, December 15, 2015, available at <https://www.nytimes.com/2015/12/16/us/los-angeles-schools-bomb-threat.html> (last visited March 13, 2017).

⁸ Id.

⁹ "Miami-Dade, Broward Schools Receive Threats: Officials," Krista Deans, NBC News 6, December 17, 2015, <http://www.nbcmiami.com/news/local/Miami-Dade-School-System-Receives-Threat-Officials-362740851.html> (last visited March 20, 2016). See also, "Frustration over 5 school bomb threats in 2 days, False calls frustrate law enforcement, but must be taken seriously, police say," Crystal Moyer, WJXT News 4 Jacksonville, December 9, 2015, available at <http://www.news4jax.com/news/bomb-scare-forces-evacuation-of-southside-business> (last visited March 20, 2016).

¹⁰ "Schools face new wave of violent threats sent by social media and other electronic means," National School Safety and Security Services, February 25, 2014, (reporting on 315 documented school bomb threats, shooting threats, hoaxes, and acts of violence between August 2013 and January 2014), available at <http://www.schoolsecurity.org/2014/02/schools-face-new-wave-violent-threats-sent-social-media-electronic-means-study-says/> (last visited March 13, 2017).

¹¹ "Twitter allows users to send 'updates' (or 'tweets': text based posts, up to 140 characters long) to [the] Twitter website via short message service (e.g. on a cell phone), instant messaging, from their computer at home or work, or through a third-party application." GNOTED, "What Is Twitter and How Does It Work- Beginner's Guide," February 9, 2009, available at <http://gnoted.com/what-is-twitter-and-how-does-it-work-beginners-guide/> (last visited March 13, 2017).

¹² *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016).

¹³ The following tweets were posted: "can't WAIT to shoot up my school," "it's time," "My mom and dad think I'm serious about shooting up my school I'm dying"; "school getting shot up on a Tuesday," "night f[***]king sucked can't wait to shoot up my school soon"; and "I sincerely apologize to anyone who took me seriously. I love my high school and honestly own no weapons to want to harm anyone in any way." *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016).

school officials through local police was too far removed to support a conviction under s. 836.10, F.S.

The court specifically discussed the difficulty of applying the current statute to modern forms of communication, recognizing that many threats made on social media fall outside the narrow scope of the law, which requires the threatening communication to be sent directly to a specific person who receives the threat.¹⁴

Warrantless Arrest

Section 901.15, F.S., provides that a law enforcement officer may arrest a person without a warrant when:

- The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer. An arrest for the commission of a misdemeanor or the violation of a municipal or county ordinance shall be made immediately or in fresh pursuit.
- A felony has been committed and he or she reasonably believes that the person committed it.
- He or she reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.
- A warrant for the arrest has been issued and is held by another officer for execution.

The principal components of a determination of reasonable suspicion or probable cause are the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause.¹⁵

The general rule is that an officer must witness a misdemeanor occurring in order to make a warrantless arrest; however, currently there are statutory exemptions from this requirement in s. 901.15, F.S.¹⁶

III. Effect of Proposed Changes:

Section 1 amends s. 836.10, F.S., to delete the current statutory requirements that a specific person be directly threatened by a person making a threat through means of a letter, inscribed communication, or electronic communication, and that the specific person actually receive the threat.

This section prohibits more modern communication circumstances in the context of threats to kill or do bodily injury to another than the statute as currently written.

The bill amends the statute to prohibit a person from making a threat to kill or injure another:

¹⁴ *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016).

¹⁵ *State v. Cuomo*, 43 So. 3d 838 (Fla.1st DCA, 2010); see also *Ornelas v. United States*, 517 U.S. 690, 696-97 (1996).

¹⁶ For example, s. 901.15(9), F.S., provides that the officer may make an arrest without a warrant when there is probable cause to believe that the person has committed: Any battery upon another person, as defined in s. 784.03, F.S.; an act of criminal mischief or a graffiti-related offense as described in s. 806.13, F.S.; or a violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone as described in s. 327.461, F.S.

- In a writing or other record, including an electronic record,
- By sending, posting, or transmitting the threat, or procuring the sending, posting, or transmission of the threat, in a manner that would allow another person to view the threat.

The term “electronic record” is defined as “relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.”

Section 2 amends s. 901.15, F.S., to include a violation of s. 836.10, F.S., as the basis for a lawful arrest by an officer without a warrant, if the officer has probable cause to believe a person has committed the offense.

The current second degree felony penalties remain in the statute for adult offenders. Section 1 amends s. 836.10, F.S., to create a first degree misdemeanor applicable to juvenile offenders.

Sections 3, 4, and 5 reenacts ss. 794.056, 921.0022, and 938.085, F.S., respectively, to incorporate the changes made by the bill to s. 836.10, F.S.

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Justice Administrative Commission has indicated that there is no expected fiscal impact to the agency related to the bill.¹⁷

¹⁷ Memorandum No. 002-17, Exec., Justice Administrative Commission.

On March 2, 2017, the Criminal Justice Impact Conference considered HB 575, the substantive provisions of which were identical to SB 260 in its original form. The Conference adopted a “positive indeterminate” estimate of the fiscal impact of the bill on prison beds, meaning that although there may be additional inmates incarcerated in state prison resulting from this bill the number is unquantifiable.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 836.10 and 901.15.

This bill reenacts the following sections of the Florida Statutes: 794.056, 921.0022, and 938.085.

IX. Additional Information:

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

Recommend CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on April 13, 2017:

The committee substitute:

- Changes the structure of subsection (1) of s. 836.10, F.S.
- Clarifies that the elements of the offense are:
 - Making a threat to kill or do bodily injury to another in a writing or other record, including an electronic record,
 - By sending, posting, or transmitting the threat (or procuring the sending, posting, or transmission of the threat) in a manner that would allow another person to view the threat.

CS by Criminal Justice on March 27, 2017:

The committee substitute:

- Reorganizes the elements of the offense so that s. 836.10(1)(b), F.S., clearly provides for a violation of the statute if a threat is posted or transmitted in a manner that would allow *any* person to view the threat (emphasis added). This clarifies that a more general threat is included within the acts that would violate s. 836.10, F.S.
- Creates a definition for the term “electronic record.”
- Provides that a juvenile who violates s. 836.10, F.S., commits a first degree misdemeanor (rather than the existing second degree felony).

- Adds a new exception, for a violation of s. 836.10, F.S., to the general rule that a misdemeanor must be committed in a law enforcement officer's presence in order for a warrantless arrest to occur.

B. Amendments:

None.

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



887240

576-03818-17

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to threats to kill or do bodily injury; amending s. 836.10, F.S.; prohibiting a person from making a threat to kill or do bodily injury in a writing or other record by posting or transmitting, or procuring the posting or transmission of, the threat in a specified manner; deleting requirements that a threat be sent to a specific recipient to be a prohibited act; providing separate penalties for juveniles and adults; defining the term "electronic record"; amending s. 901.15, F.S.; authorizing a law enforcement officer to arrest a person without a warrant for a criminal act of threat to kill or do bodily injury, as shown in a posting or as transmitted in a specified manner; reenacting ss. 794.056(1), 921.0022(3)(f), and 938.085, F.S., relating to the Rape Crisis Program Trust Fund, the offense severity ranking chart of the Criminal Punishment Code, and additional cost to fund rape crisis centers, respectively, to incorporate the amendment made to s. 836.10, F.S., in references thereto; providing an effective date.

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

Section 1. Section 836.10, Florida Statutes, is amended to read:



887240

576-03818-17

836.10 Written threats to kill or do bodily injury; punishment.—

(1) It is unlawful for a Any person to make who writes or composes and also sends or procures the sending of any letter, inscribed communication, or electronic communication, whether such letter or communication be signed or anonymous, to any person, containing a threat to kill or to do bodily injury to another the person in a writing or other record, including an electronic record, by sending, posting, or transmitting, or procuring the sending, posting, or transmission of, the threat in a manner that would allow another person to view the threat.

(2) A person who is 18 years of age or older and who violates this section to whom such letter or communication is sent, or a threat to kill or do bodily injury to any member of the family of the person to whom such letter or communication is sent commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who is under the age of 18 and who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) For purposes of this section, the term "electronic record" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Section 2. Subsection (17) is added to section 901.15, Florida Statutes, to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:



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57 (17) There is probable cause to believe that the person has
58 committed a criminal act of threat to kill or do bodily injury
59 as described in s. 836.10.

60 Section 3. For the purpose of incorporating the amendment
61 made by this act to section 836.10, Florida Statutes, in a
62 reference thereto, subsection (1) of section 794.056, Florida
63 Statutes, is reenacted to read:

64 794.056 Rape Crisis Program Trust Fund.-

65 (1) The Rape Crisis Program Trust Fund is created within
66 the Department of Health for the purpose of providing funds for
67 rape crisis centers in this state. Trust fund moneys shall be
68 used exclusively for the purpose of providing services for
69 victims of sexual assault. Funds credited to the trust fund
70 consist of those funds collected as an additional court
71 assessment in each case in which a defendant pleads guilty or
72 nolo contendere to, or is found guilty of, regardless of
73 adjudication, an offense provided in s. 775.21(6) and (10) (a),
74 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.
75 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.
76 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.
77 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;
78 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.
79 796.06; s. 796.07(2) (a)-(d) and (i); s. 800.03; s. 800.04; s.
80 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.
81 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s.
82 847.0137; s. 847.0145; s. 943.0435(4) (c), (7), (8), (9) (a),
83 (13), and (14) (c); or s. 985.701(1). Funds credited to the trust
84 fund also shall include revenues provided by law, moneys
85 appropriated by the Legislature, and grants from public or



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86 private entities.

87 Section 4. For the purpose of incorporating the amendment
88 made by this act to section 836.10, Florida Statutes, in a
89 reference thereto, paragraph (f) of subsection (3) of section
90 921.0022, Florida Statutes, is reenacted to read:

91 921.0022 Criminal Punishment Code; offense severity ranking
92 chart.-

93 (3) OFFENSE SEVERITY RANKING CHART

94 (f) LEVEL 6

95	96	97	98	99	100
Florida Statute	Felony Degree	Description			
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.			
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.			
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.			
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.			



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499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.



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784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.



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790.164(1) 2nd False report concerning bomb,
explosive, weapon of mass
destruction, act of arson or
violence to state property, or
use of firearms in violent
manner.

119

790.19 2nd Shooting or throwing deadly
missiles into dwellings,
vessels, or vehicles.

120

794.011(8)(a) 3rd Solicitation of minor to
participate in sexual activity
by custodial adult.

121

794.05(1) 2nd Unlawful sexual activity with
specified minor.

122

800.04(5)(d) 3rd Lewd or lascivious molestation;
victim 12 years of age or older
but less than 16 years of age;
offender less than 18 years.

123

800.04(6)(b) 2nd Lewd or lascivious conduct;
offender 18 years of age or
older.

124

806.031(2) 2nd Arson resulting in great bodily



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harm to firefighter or any
other person.

810.02(3)(c)

2nd

Burglary of occupied structure;
unarmed; no assault or battery.

126

810.145(8)(b)

2nd

Video voyeurism; certain minor
victims; 2nd or subsequent
offense.

127

812.014(2)(b)1.

2nd

Property stolen \$20,000 or
more, but less than \$100,000,
grand theft in 2nd degree.

128

812.014(6)

2nd

Theft; property stolen \$3,000
or more; coordination of
others.

129

812.015(9)(a)

2nd

Retail theft; property stolen
\$300 or more; second or
subsequent conviction.

130

812.015(9)(b)

2nd

Retail theft; property stolen
\$3,000 or more; coordination of
others.

131

812.13(2)(c)

2nd

Robbery, no firearm or other
weapon (strong-arm robbery).

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133 817.4821(5) 2nd Possess cloning paraphernalia
with intent to create cloned
cellular telephones.

134 825.102(1) 3rd Abuse of an elderly person or
disabled adult.

135 825.102(3)(c) 3rd Neglect of an elderly person or
disabled adult.

136 825.1025(3) 3rd Lewd or lascivious molestation
of an elderly person or
disabled adult.

137 825.103(3)(c) 3rd Exploiting an elderly person or
disabled adult and property is
valued at less than \$10,000.

138 827.03(2)(c) 3rd Abuse of a child.

139 827.03(2)(d) 3rd Neglect of a child.

140 827.071(2) & (3) 2nd Use or induce a child in a
sexual performance, or promote
or direct such performance.

141 836.05 2nd Threats; extortion.

836.10 2nd Written threats to kill or do



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bodily injury.

142

843.12 3rd Aids or assists person to
escape.

143

847.011 3rd Distributing, offering to
distribute, or possessing with
intent to distribute obscene
materials depicting minors.

144

847.012 3rd Knowingly using a minor in the
production of materials harmful
to minors.

145

847.0135(2) 3rd Facilitates sexual conduct of
or with a minor or the visual
depiction of such conduct.

146

914.23 2nd Retaliation against a witness,
victim, or informant, with
bodily injury.

147

944.35(3)(a)2. 3rd Committing malicious battery
upon or inflicting cruel or
inhuman treatment on an inmate
or offender on community
supervision, resulting in great
bodily harm.

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944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

Section 5. For the purpose of incorporating the amendment
made by this act to section 836.10, Florida Statutes, in a
reference thereto, section 938.085, Florida Statutes, is
reenacted to read:

938.085 Additional cost to fund rape crisis centers.—In
addition to any sanction imposed when a person pleads guilty or
nolo contendere to, or is found guilty of, regardless of
adjudication, a violation of s. 775.21(6) and (10)(a), (b), and
(g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;
s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.
784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.
787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.
796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s.



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796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.
810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s.
827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s.
847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and
(14)(c); or s. 985.701(1), the court shall impose a surcharge of
\$151. Payment of the surcharge shall be a condition of
probation, community control, or any other court-ordered
supervision. The sum of \$150 of the surcharge shall be deposited
into the Rape Crisis Program Trust Fund established within the
Department of Health by chapter 2003-140, Laws of Florida. The
clerk of the court shall retain \$1 of each surcharge that the
clerk of the court collects as a service charge of the clerk's
office.

Section 6. This act shall take effect October 1, 2017.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 260 (887240)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senators Steube and Simmons

SUBJECT: Threats to Kill or Do Bodily Injury

DATE: April 21, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2. <u>Mcauliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3. <u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>
4. _____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 260 amends section 836.10, Florida Statutes, to delete the current statutory requirements that a specific person be directly threatened by a person making a threat through means of a letter, inscribed communication, or electronic communication, and that the specific person actually receive the threat.

The bill:

- Reorganizes the elements of the offense so that section 836.10(1), Florida Statutes, provides for a violation of the statute if a threat to kill or do bodily injury to another is sent, posted, or transmitted in a manner that would allow another person to view the threat. This clarifies that a more general threat is included within the acts that violate section 836.10, Florida Statutes.
- Creates a definition for the term “electronic record.”
- Provides that a juvenile who violates section 836.10, Florida Statutes, commits a first degree misdemeanor (rather than the existing second degree felony).
- Adds a new exception, for a violation of section 836.10, Florida Statutes, to the general rule that a misdemeanor must be committed in a law enforcement officer’s presence in order for a warrantless arrest to occur.

This bill makes section 836.10, Florida Statutes, applicable to circumstances where a person transmits a threat to kill or do bodily injury to another in a more public forum than the current law contemplates.

On March 2, 2017, the Criminal Justice Impact Conference considered HB 575, the substantive provisions of which were identical to SB 260 in its original form. The Conference adopted a “positive indeterminate” estimate of the fiscal impact of the bill on prison beds, meaning that although there may be additional inmates incarcerated in state prison resulting from this bill the number is unquantifiable.

The bill is effective October 1, 2017.

II. Present Situation:

When s. 836.10, F.S., was enacted in 1913, social media was limited to the “pen and paper” written word, the newspaper, and possibly the radio.

Having been amended in 2010¹ to add “electronic communication,” s. 836.10, F.S., currently prohibits a person from:

- Writing or composing and sending to any person:
 - A letter,
 - Inscribed communication, or
 - Electronic communication,
- Containing a threat to kill or do bodily injury to:
 - The person to whom the letter or communication was sent, or
 - Any member of the person’s family.²

The act of “sending” under the statute requires two events – sending the communication to a particular person *and* receipt of the communication by the person being threatened.³

When the target of the threat is not necessarily a particular individual, but more random in nature, it is then that the application of the statute breaks down, particularly as related to social media.

Social Media

Studies indicate that social media sites and other apps are widely used to communicate with other people and to find information. For example, recent publications by the Pew Research Center report that:

- 86 percent of Americans use the internet;⁴

¹ Chapter 2010-51, Laws of Florida.

² A violation of s. 836.10, F.S., is a second degree felony, punishable by up to 15 years in prison and a fine of up to \$10,000. ss. 775.082, 775.083, and 775.084, F.S.

³ *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016) citing *State v. Wise*, 664 So.2d 1028, 1030 (Fla. 2nd DCA 1995).

⁴ Pew Research Center, November 2016, “Social Media Update,” pages 1-2.

- Of the surveyed 1,520 adults in one study, 79 percent use Facebook, 32 percent use Instagram, 31 percent use Pinterest, 29 percent use LinkedIn, and 24 percent use Twitter;⁵ and
- In a survey of 1,060 teens ages 13-17 and their parent or guardian, when asked about the use of specific sites, 89 percent of all teens reported the use of at least one of the sites and 71 percent used 2 or more of the sites.⁶

Examples of Random School Threats Using E-Mail

In late 2015, there was a rash of e-mailed hoax threats against schools across the country that began in New York City and Los Angeles.⁷ The New York and Los Angeles threats were nearly identically worded, threatening the use of bombs, nerve gas, and rifles, and routed through a server in Frankfurt, Germany, apparently by the same person.⁸ A few days later, similar threats were directed at schools in Florida.⁹ Social media and other electronic forms of communication were used in at least 35 percent of the violent threats to schools in one recent study covering half the 2013-14 school year in 43 states.¹⁰

Case Law Applying Current Statute

In a 2016 court decision, a juvenile's disposition under s. 836.10, F.S., for posting written threats to kill or do bodily injury on Twitter¹¹ was reversed.¹² The juvenile made a series of public posts on Twitter over the span of several days threatening to "shoot up" his school.¹³ The tweets were discovered by an out-of-state watchdog group who reported the threats to local police. Local police later contacted the juvenile's school officials informing them of the threats.

The Second District Court of Appeals found that because the juvenile publicly posted the tweets, rather than directly sending them to any student or school official, the receipt of the threats by

⁵ Pew Research Center, November 2016, "Social Media Update," pages 1-2.

⁶ Pew Research Center, April 2015, "Teen, Social Media and Technology Overview 2015," pages 7 and 25.

⁷ "Los Angeles and New York Differ in Their Responses to a Terrorism Threat," The New York Times, December 15, 2015, available at <https://www.nytimes.com/2015/12/16/us/los-angeles-schools-bomb-threat.html> (last visited March 13, 2017).

⁸ Id.

⁹ "Miami-Dade, Broward Schools Receive Threats: Officials," Krista Deans, NBC News 6, December 17, 2015, <http://www.nbcmiami.com/news/local/Miami-Dade-School-System-Receives-Threat-Officials-362740851.html> (last visited March 20, 2016). See also, "Frustration over 5 school bomb threats in 2 days, False calls frustrate law enforcement, but must be taken seriously, police say," Crystal Moyer, WJXT News 4 Jacksonville, December 9, 2015, available at <http://www.news4jax.com/news/bomb-scare-forces-evacuation-of-southside-business> (last visited March 20, 2016).

¹⁰ "Schools face new wave of violent threats sent by social media and other electronic means," National School Safety and Security Services, February 25, 2014, (reporting on 315 documented school bomb threats, shooting threats, hoaxes, and acts of violence between August 2013 and January 2014), available at <http://www.schoolsecurity.org/2014/02/schools-face-new-wave-violent-threats-sent-social-media-electronic-means-study-says/> (last visited March 13, 2017).

¹¹ "Twitter allows users to send 'updates' (or 'tweets': text based posts, up to 140 characters long) to [the] Twitter website via short message service (e.g. on a cell phone), instant messaging, from their computer at home or work, or through a third-party application." GNOTED, "What Is Twitter and How Does It Work- Beginner's Guide," February 9, 2009, available at <http://gnoted.com/what-is-twitter-and-how-does-it-work-beginners-guide/> (last visited March 13, 2017).

¹² *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016).

¹³ The following tweets were posted: "can't WAIT to shoot up my school," "it's time," "My mom and dad think I'm serious about shooting up my school I'm dying"; "school getting shot up on a Tuesday," "night f[***]king sucked can't wait to shoot up my school soon"; and "I sincerely apologize to anyone who took me seriously. I love my high school and honestly own no weapons to want to harm anyone in any way." *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016).

school officials through local police was too far removed to support a conviction under s. 836.10, F.S.

The court specifically discussed the difficulty of applying the current statute to modern forms of communication, recognizing that many threats made on social media fall outside the narrow scope of the law, which requires the threatening communication to be sent directly to a specific person who receives the threat.¹⁴

Warrantless Arrest

Section 901.15, F.S., provides that a law enforcement officer may arrest a person without a warrant when:

- The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer. An arrest for the commission of a misdemeanor or the violation of a municipal or county ordinance shall be made immediately or in fresh pursuit.
- A felony has been committed and he or she reasonably believes that the person committed it.
- He or she reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.
- A warrant for the arrest has been issued and is held by another officer for execution.

The principal components of a determination of reasonable suspicion or probable cause are the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause.¹⁵

The general rule is that an officer must witness a misdemeanor occurring in order to make a warrantless arrest; however, currently there are statutory exemptions from this requirement in s. 901.15, F.S.¹⁶

III. Effect of Proposed Changes:

Section 1 amends s. 836.10, F.S., to delete the current statutory requirements that a specific person be directly threatened by a person making a threat through means of a letter, inscribed communication, or electronic communication, and that the specific person actually receive the threat.

This section prohibits more modern communication circumstances in the context of threats to kill or do bodily injury to another than the statute as currently written.

The bill amends the statute to prohibit a person from making a threat to kill or injure another:

¹⁴ *J.A.W. v. State*, 41 Fla.L. Weekly D 2227 (Fla. 2nd DCA, 2016).

¹⁵ *State v. Cuomo*, 43 So. 3d 838 (Fla. 1st DCA, 2010); see also *Ornelas v. United States*, 517 U.S. 690, 696-97 (1996).

¹⁶ For example, s. 901.15(9), F.S., provides that the officer may make an arrest without a warrant when there is probable cause to believe that the person has committed: Any battery upon another person, as defined in s. 784.03, F.S.; an act of criminal mischief or a graffiti-related offense as described in s. 806.13, F.S.; or a violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone as described in s. 327.461, F.S.

- In a writing or other record, including an electronic record,
- By sending, posting, or transmitting the threat, or procuring the sending, posting, or transmission of the threat, in a manner that would allow another person to view the threat.

The term “electronic record” is defined as “relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.”

Section 2 amends s. 901.15, F.S., to include a violation of s. 836.10, F.S., as the basis for a lawful arrest by an officer without a warrant, if the officer has probable cause to believe a person has committed the offense.

The current second degree felony penalties remain in the statute for adult offenders. Section 1 amends s. 836.10, F.S., to create a first degree misdemeanor applicable to juvenile offenders.

Sections 3, 4, and 5 reenacts ss. 794.056, 921.0022, and 938.085, F.S., respectively, to incorporate the changes made by the bill to s. 836.10, F.S.

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Justice Administrative Commission has indicated that there is no expected fiscal impact to the agency related to the bill.¹⁷

¹⁷ Memorandum No. 002-17, Exec., Justice Administrative Commission.

On March 2, 2017, the Criminal Justice Impact Conference considered HB 575, the substantive provisions of which were identical to SB 260 in its original form. The Conference adopted a “positive indeterminate” estimate of the fiscal impact of the bill on prison beds, meaning that although there may be additional inmates incarcerated in state prison resulting from this bill the number is unquantifiable.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 836.10 and 901.15.

This bill reenacts the following sections of the Florida Statutes: 794.056, 921.0022, and 938.085.

IX. Additional Information:

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

CS/CS by Appropriations on April 20, 2017:

The committee substitute:

- Changes the structure of subsection (1) of s. 836.10, F.S.
- Clarifies that the elements of the offense are:
 - Making a threat to kill or do bodily injury to another in a writing or other record, including an electronic record,
 - By sending, posting, or transmitting the threat (or procuring the sending, posting, or transmission of the threat) in a manner that would allow another person to view the threat.

CS by Criminal Justice on March 27, 2017:

The committee substitute:

- Reorganizes the elements of the offense so that s. 836.10(1)(b), F.S., clearly provides for a violation of the statute if a threat is posted or transmitted in a manner that would allow *any* person to view the threat (emphasis added). This clarifies that a more general threat is included within the acts that would violate s. 836.10, F.S.
- Creates a definition for the term “electronic record.”
- Provides that a juvenile who violates s. 836.10, F.S., commits a first degree misdemeanor (rather than the existing second degree felony).
- Adds a new exception, for a violation of s. 836.10, F.S., to the general rule that a misdemeanor must be committed in a law enforcement officer’s presence in order for a warrantless arrest to occur.

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senator Steube

591-02913-17

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1 A bill to be entitled
 2 An act relating to threats to kill or do bodily
 3 injury; amending s. 836.10, F.S.; prohibiting a person
 4 from making a threat to kill or do bodily injury in a
 5 writing or other record, or by posting or transmitting
 6 the threat in a specified manner; deleting
 7 requirements that a threat be sent to a specific
 8 recipient to be prohibited; providing separate
 9 penalties for juveniles and adults; amending s.
 10 901.15; F.S.; authorizing a law enforcement officer to
 11 arrest a person without a warrant for a criminal act
 12 of threat to kill or do bodily injury, as shown in a
 13 posting or as transmitted in a specified manner;
 14 reenacting ss. 794.056(1), 921.0022(3)(f), and
 15 938.085, F.S., relating to the Rape Crisis Program
 16 Trust Fund, to the offense severity ranking chart of
 17 the Criminal Punishment Code, and to additional cost
 18 to fund rape crisis centers, respectively, to
 19 incorporate the amendment made to s. 836.10, F.S., in
 20 references thereto; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 836.10, Florida Statutes, is amended to
 25 read:

26 836.10 Written threats to kill or do bodily injury;
 27 punishment.—

28 (1) It is unlawful for a Any person to make who writes or
 29 composes and also sends or procures the sending of any letter,

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

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30 ~~inscribed communication, or electronic communication, whether~~
 31 ~~such letter or communication be signed or anonymous, to any~~
 32 ~~person, containing a threat to kill or to do bodily injury to~~
 33 ~~another the person:~~
 34 (a) In a writing or other record, including an electronic
 35 record; or
 36 (b) By posting or transmitting, or procuring the posting or
 37 transmission, in a manner that would allow any person to view
 38 the threat.
 39 (2) A person who is 18 years of age or older and who
 40 violates this section to whom such letter or communication is
 41 sent, or a threat to kill or do bodily injury to any member of
 42 the family of the person to whom such letter or communication is
 43 sent commits a felony of the second degree, punishable as
 44 provided in s. 775.082, s. 775.083, or s. 775.084.
 45 (3) A person who is under the age of 18 and who violates
 46 this section commits a misdemeanor of the first degree,
 47 punishable as provided in s. 775.082 or s. 775.083.
 48 (4) For purposes of this section, the term "electronic
 49 record" means relating to technology having electrical, digital,
 50 magnetic, wireless, optical, electromagnetic, or similar
 51 capabilities.
 52 Section 2. Subsection (17) is added to section 901.15,
 53 Florida Statutes, to read:
 54 901.15 When arrest by officer without warrant is lawful.—A
 55 law enforcement officer may arrest a person without a warrant
 56 when:
 57 (17) There is probable cause to believe that the person has
 58 committed a criminal act of threat to kill or do bodily injury

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

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59 as described in s. 836.10.
 60 Section 3. For the purpose of incorporating the amendment
 61 made by this act to section 836.10, Florida Statutes, in a
 62 reference thereto, subsection (1) of section 794.056, Florida
 63 Statutes, is reenacted to read:
 64 794.056 Rape Crisis Program Trust Fund.—
 65 (1) The Rape Crisis Program Trust Fund is created within
 66 the Department of Health for the purpose of providing funds for
 67 rape crisis centers in this state. Trust fund moneys shall be
 68 used exclusively for the purpose of providing services for
 69 victims of sexual assault. Funds credited to the trust fund
 70 consist of those funds collected as an additional court
 71 assessment in each case in which a defendant pleads guilty or
 72 nolo contendere to, or is found guilty of, regardless of
 73 adjudication, an offense provided in s. 775.21(6) and (10) (a),
 74 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.
 75 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.
 76 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.
 77 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;
 78 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.
 79 796.06; s. 796.07(2) (a)-(d) and (i); s. 800.03; s. 800.04; s.
 80 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.
 81 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s.
 82 847.0137; s. 847.0145; s. 943.0435(4) (c), (7), (8), (9) (a),
 83 (13), and (14) (c); or s. 985.701(1). Funds credited to the trust
 84 fund also shall include revenues provided by law, moneys
 85 appropriated by the Legislature, and grants from public or
 86 private entities.
 87 Section 4. For the purpose of incorporating the amendment

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88 made by this act to section 836.10, Florida Statutes, in a
 89 reference thereto, paragraph (f) of subsection (3) of section
 90 921.0022, Florida Statutes, is reenacted to read:
 91 921.0022 Criminal Punishment Code; offense severity ranking
 92 chart.—
 93 (3) OFFENSE SEVERITY RANKING CHART
 94 (f) LEVEL 6
 95
 96

Florida Statute	Felony Degree	Description
316.027(2) (b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2) (b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4) (c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
499.0051(3)	2nd	Knowing purchase or receipt of

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				prescription drug from unauthorized person.
102	499.0051 (4)	2nd		Knowing sale or transfer of prescription drug to unauthorized person.
103	775.0875 (1)	3rd		Taking firearm from law enforcement officer.
104	784.021 (1) (a)	3rd		Aggravated assault; deadly weapon without intent to kill.
105	784.021 (1) (b)	3rd		Aggravated assault; intent to commit felony.
106	784.041	3rd		Felony battery; domestic battery by strangulation.
107	784.048 (3)	3rd		Aggravated stalking; credible threat.
108	784.048 (5)	3rd		Aggravated stalking of person under 16.
109	784.07 (2) (c)	2nd		Aggravated assault on law enforcement officer.
110	784.074 (1) (b)	2nd		Aggravated assault on sexually

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				violent predators facility staff.
111	784.08 (2) (b)	2nd		Aggravated assault on a person 65 years of age or older.
112	784.081 (2)	2nd		Aggravated assault on specified official or employee.
113	784.082 (2)	2nd		Aggravated assault by detained person on visitor or other detainee.
114	784.083 (2)	2nd		Aggravated assault on code inspector.
115	787.02 (2)	3rd		False imprisonment; restraining with purpose other than those in s. 787.01.
116	790.115 (2) (d)	2nd		Discharging firearm or weapon on school property.
117	790.161 (2)	2nd		Make, possess, or throw destructive device with intent to do bodily harm or damage property.
118	790.164 (1)	2nd		False report concerning bomb,

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				explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
119	790.19	2nd		Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
120	794.011(8) (a)	3rd		Solicitation of minor to participate in sexual activity by custodial adult.
121	794.05(1)	2nd		Unlawful sexual activity with specified minor.
122	800.04(5) (d)	3rd		Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
123	800.04(6) (b)	2nd		Lewd or lascivious conduct; offender 18 years of age or older.
124	806.031(2)	2nd		Arson resulting in great bodily harm to firefighter or any other person.

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125	810.02(3) (c)	2nd		Burglary of occupied structure; unarmed; no assault or battery.
126	810.145(8) (b)	2nd		Video voyeurism; certain minor victims; 2nd or subsequent offense.
127	812.014(2) (b)1.	2nd		Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
128	812.014(6)	2nd		Theft; property stolen \$3,000 or more; coordination of others.
129	812.015(9) (a)	2nd		Retail theft; property stolen \$300 or more; second or subsequent conviction.
130	812.015(9) (b)	2nd		Retail theft; property stolen \$3,000 or more; coordination of others.
131	812.13(2) (c)	2nd		Robbery, no firearm or other weapon (strong-arm robbery).
132	817.4821(5)	2nd		Possess cloning paraphernalia with intent to create cloned

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 133 cellular telephones.
 825.102(1) 3rd Abuse of an elderly person or
 134 disabled adult.
 825.102(3)(c) 3rd Neglect of an elderly person or
 135 disabled adult.
 825.1025(3) 3rd Lewd or lascivious molestation
 of an elderly person or
 136 disabled adult.
 825.103(3)(c) 3rd Exploiting an elderly person or
 disabled adult and property is
 137 valued at less than \$10,000.
 827.03(2)(c) 3rd Abuse of a child.
 138 827.03(2)(d) 3rd Neglect of a child.
 139 827.071(2) & (3) 2nd Use or induce a child in a
 sexual performance, or promote
 140 or direct such performance.
 836.05 2nd Threats; extortion.
 141 836.10 2nd Written threats to kill or do
 142 bodily injury.

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 843.12 3rd Aids or assists person to
 143 escape.
 847.011 3rd Distributing, offering to
 144 distribute, or possessing with
 intent to distribute obscene
 materials depicting minors.
 847.012 3rd Knowingly using a minor in the
 145 production of materials harmful
 to minors.
 847.0135(2) 3rd Facilitates sexual conduct of
 146 or with a minor or the visual
 depiction of such conduct.
 914.23 2nd Retaliation against a witness,
 147 victim, or informant, with
 bodily injury.
 944.35(3)(a)2. 3rd Committing malicious battery
 upon or inflicting cruel or
 148 inhuman treatment on an inmate
 or offender on community
 supervision, resulting in great
 944.40 2nd Escapes.
 149

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

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944.46 3rd Harboring, concealing, aiding
escaped prisoners.

150 944.47(1)(a)5. 2nd Introduction of contraband
(firearm, weapon, or explosive)
into correctional facility.

151 951.22(1) 3rd Intoxicating drug, firearm, or
weapon introduced into county
facility.

152

153

154

155 Section 5. For the purpose of incorporating the amendment

156 made by this act to section 836.10, Florida Statutes, in a

157 reference thereto, section 938.085, Florida Statutes, is

158 reenacted to read:

159 938.085 Additional cost to fund rape crisis centers.—In

160 addition to any sanction imposed when a person pleads guilty or

161 nolo contendere to, or is found guilty of, regardless of

162 adjudication, a violation of s. 775.21(6) and (10)(a), (b), and

163 (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;

164 s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.

165 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.

166 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.

167 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s.

168 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.

169 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s.

170 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s.

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171 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and

172 (14)(c); or s. 985.701(1), the court shall impose a surcharge of

173 \$151. Payment of the surcharge shall be a condition of

174 probation, community control, or any other court-ordered

175 supervision. The sum of \$150 of the surcharge shall be deposited

176 into the Rape Crisis Program Trust Fund established within the

177 Department of Health by chapter 2003-140, Laws of Florida. The

178 clerk of the court shall retain \$1 of each surcharge that the

179 clerk of the court collects as a service charge of the clerk's

180 office.

181 Section 6. This act shall take effect October 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

April 13, 2017

The Honorable Jack Latvala
Florida Senate
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Latvala,

I am writing this letter because several of my bills have been referred to the Senate Appropriations Committee. I am respectfully requesting that you place the following bills on your committee's calendar for the next committee week:

- SB 166 – Alcoholic Beverages
- SB 260 – Threats to Kill or Do Bodily Injury
- SB 330 – Local Business Taxes
- SB 748 – Florida Court Education Council

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in blue ink, appearing to read "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/17
Meeting Date

260
Bill Number (if applicable)

Topic THREATS Bill

Amendment Barcode (if applicable)

Name DENNIS STRANGE

Job Title Captain

Address 2500 West Colonial
Street

Phone 407-254-7000

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 Orange County Sheriff's Office

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 Appropriations

BILL: PCS/CS/SB 368 (757218)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Montford

SUBJECT: Transportation Facility Designations

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Miller</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Pitts</u>	<u>Pitts</u>	<u>ATD</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pitts</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 368 creates 36 honorary designations of transportation facilities around the state and directs the Florida Department of Transportation (FDOT) to erect suitable markers designating the transportation facilities. The bill also revises two previously enacted honorary designations.

The bill also requires the FDOT to erect appropriate signage commemorating specified conflicts involving the United States Armed Forces along portions of the Veterans Expressway in Hillsborough and Hernando counties.

The FDOT will incur approximately \$42,000 in expenditures to install the designation markers required under the bill.

The effective date of the bill is July 1, 2017

II. Present Situation:

Designation of Transportation Facilities and Highways

Legislative Designation of Transportation Facilities

Section 334.071, F.S., provides that legislative designations of transportation facilities be for honorary or memorial purposes, or to distinguish a particular facility. Such designations may not be construed as requiring any action by local governments or private parties regarding the changing of any street signs, mailing addresses, or 911 emergency telephone number system listings, unless the legislation specifically provides for such changes.¹

When the Legislature establishes road or bridge designations, the Florida Department of Transportation (FDOT) is required to place markers only at the termini specified for each highway segment or bridge designated by the law creating the designation, and to erect any other markers it deems appropriate for the transportation facility.²

The FDOT may not erect the markers for honorary road or bridge designations unless the affected city or county commission enacts a resolution supporting the designation. When the designated road or bridge segment is located in more than one city or county, each affected local government must pass resolutions supporting the designations prior to installation of the markers.³

Blue Star Memorial Highway Designation

Section 335.091, F.S., authorizes the head of the FDOT, in cooperation with the Florida Federation of Garden Clubs, Inc. (Federation), to designate certain roads as Blue Star Memorial highways in honor of those individuals who have served or are serving in the Armed Forces of the United States.

The Federation is directed to submit to the FDOT routes on certain roads in the state for designation as Blue Star Memorial highways.⁴ Upon designation of a route, any member of the Federation may, with the advice, cooperation, and approval of the FDOT, erect suitable markers and beautify such memorial highway.⁵ The FDOT must then file with the Department of State a record of such roads designated as Blue Star Memorial highways.⁶

Scenic Highway Designation

The FDOT may, after consultation with other state agencies and local governments, designate public roads as scenic highways.⁷ Public roads designated as scenic highways are intended to

¹ Section 334.071(1), F.S.

² Section 334.071(2), F.S.

³ Section 334.071(3), F.S.

⁴ Section 335.091(2), F.S.

⁵ Id.

⁶ Section 335.091(3), F.S.

⁷ Section 335.093(1), F.S.

preserve, maintain, and protect a part of Florida's cultural, historical, and scenic routes for vehicular, bicycle, and pedestrian travel.⁸

The FDOT may by rule adopt appropriate criteria for the designation of scenic highways and may specify appropriate planning and design standards including corridor management plans on such scenic highways.⁹ The designation of scenic highways and the criteria adopted by the FDOT are not intended to affect or limit existing or customary uses in commercial or industrial areas that are adjacent to designated scenic highways nor is designation intended to limit the ability of local government entities to control or limit land uses in commercial or industrial areas within their jurisdictions.¹⁰

III. Effect of Proposed Changes:

Section 1 of the bill creates the following 36 honorary transportation facility designations around the state and directs the FDOT to erect suitable markers:

Private First Class Joey Moody Bridge

Bridge number 380096 on U.S. 221/S.R. 55 over the Econfina River in Taylor County is designated as "Private First Class Joey Moody Bridge."

Private First Class Joey Moody grew up in Shady Grove on the Econfina River. He attended Shady Grove Grammar School and graduated from Taylor County High School before attending the University of Florida. On June 21, 1952, PFC Moody, serving in Korea, was one of three men sent into enemy fire to repair a crucial communications line and lost his life when a mortar round exploded. He was posthumously awarded the National Defense Service Medal, the Korean Combat Medal, the Korean Battle Medal, and the Purple Heart.

Corporal Joseph R. Bertrand Memorial Highway

The portion of S.R. 80 between Hickey Creek Road and Carter Lane in Lee County is designated as "Corporal Joseph R. Bertrand Memorial Highway."

Corporal Joseph R. Bertrand was a member of the Florida Highway Patrol who served the citizens of Florida for 16 years. On December 22, 1967, Corporal Bertrand was shot and killed while conducting a driving-under-the-influence investigation on State Road 80 in Fort Myers, Florida.

Lieutenant Benedict J. Thomas Memorial Highway

The portion of Interstate 75/S.R. 93A between Fowler Avenue and Fletcher Avenue in Hillsborough County is designated as "Lieutenant Benedict J. Thomas Memorial Highway."

⁸ Id.

⁹ Section 335.093(2), F.S.

¹⁰ Section 335.093(3), F.S.

Lieutenant Benedict J. Thomas was a member of the Florida Highway Patrol who served the citizens of Florida for 11 years. On June 9, 1989, a passing car struck and killed Lieutenant Thomas while walking back to his vehicle after investigating an abandoned vehicle on Interstate 75 in Tampa, Florida.

Trooper Patrick Ambroise Memorial Highway

The portion of the Homestead Extension of the Florida Turnpike/S.R. 821 between mile marker 34 and mile marker 36 in Miami-Dade County is designated as “Trooper Patrick Ambroise Memorial Highway.”

Trooper Patrick Ambroise was a member of the Florida Highway Patrol who served the citizens of Florida for four years. On May 15, 2010, while parked in his patrol vehicle on the shoulder of northbound State Road 821, a passing vehicle veered onto the paved emergency shoulder and struck the left rear section of the patrol vehicle, killing Trooper Ambroise.

SP4 Robert Clifford Millender Memorial Highway

The portion of U.S. 98/S.R.30 between Ryan Drive/W. 11th Street and N.E./S.E. 12th Street in Franklin County is designated as “SP4 Robert Clifford Millender Memorial Highway.”

SP4 Robert Clifford Millender was inducted into the United States Army on August 7, 1968. After boot camp training, he was transferred to Vietnam, where he served for two months before being injured in a land mine explosion. He was cared for at Walter Reed General Hospital and was discharged from the Army on July 22, 1969. SP4 Millender died of his war-related injuries on January 14, 1970. He received the Purple Heart, the National Defense Service Medal, and the Vietnam Service Medal.

Joe C. Peavy Highway

The portion of S.R. 53 between U.S. 90/S.R. 10 and the Georgia state line in Madison County is designated as “Joe C. Peavy Highway.”

Joe C. Peavy served as Madison County Sheriff from 1968 until 1996 after 16 years with the Florida Highway Patrol. He was a participant in a number of Madison County organizations such as the Lions Club, the Masonic Lodge #11, the Madison Shrine Club, and the Cattleman Association, and he served as a Senior Citizens Council Board member. He passed away on November 19, 2016.

Gulf Coast Highway

The portion of U.S. 19/S.R. 55 between the Pinellas County line and the Hernando County line in Pasco County is designated as “Gulf Coast Highway.”

Following a public outreach campaign by the West Pasco Chamber of Commerce seeking input on proposed designation names for U.S. 19 within Pasco County, “Gulf Coast Highway” was

chosen as a method for reinforcing a strategy to improve the coastal image of the corridor and area and reflecting its relationship to the Gulf of Mexico as a coastal highway.

Helen Gordon Davis Boulevard

The portion of Davis Boulevard between Adalia Avenue and Adriatic Avenue in Hillsborough County is designated as “Helen Gordon Davis Boulevard.”

Helen Gordon Davis was the first woman from Hillsborough County elected to the Florida House of Representatives. She opened doors for women and minorities, confronting inequalities with poise and determination. Many in the Tampa Bay area revered Mrs. Davis, a fearless legislator. In 1952, she was the first white woman in Florida to join the NAACP at a time of civil unrest in the South. She established the Centre for Women as “The Women’s Survival Centre” to help women become financially independent. Her vision and foresight have made it possible for The Centre for Women to help more than 80,000 individuals to lead more successful and fulfilling lives. Ms. Davis passed away in May of 2015.

Francisco A. Rodriguez Avenue

The portion of N. Willow Avenue between W. Cypress Street and W. Cass Street in Hillsborough County is designated as “Francisco Rodriguez Avenue.”

Francisco Rodriguez was born in Tampa to Cuban parents who were members of Marti-Maceo. He started his career as a teacher but decided to go to law school at Howard University after returning from World War II to a segregated South where nothing had changed. At Howard, he became involved with the National Association for the Advancement of Colored People and was appointed special counsel for the southeast region in 1952, when he returned to Tampa. In 1954, following the Brown decision, he filed numerous legal actions to desegregate schools and recreational facilities in Florida. He unsuccessfully ran for office as juvenile court judge and member of the city council.

Olympian Theresa Manuel Way

The portion of N. Garcia Avenue between W. Palm Avenue and W. Ross Avenue in Hillsborough County is designated as “Olympian Theresa Manuel Way.”

Tampa native Theresa A. Manuel was an educator, coach, and Olympian. She graduated from the Tuskegee Institute, where she helped lead her school's basketball team to four consecutive conference championships, and then went onto teach locally for 35 years at both Middleton and Hillsborough high schools. However, her greatest accomplishment was being chosen as a member of the 1948 U.S. Olympic Track Team, making her the first African-American Floridian to compete in the Olympic Games, which were held that year in London. Ms. Manuel passed away on November 21, 2016, in Tampa. She was 90.

Robert L. Shevin Memorial Boulevard

The portion of Miami Avenue between N.E. 5th Street and U.S. 41/S.R. 90/S.E. 7th Street in Miami-Dade County is designated as "Robert L. Shevin Memorial Boulevard."

Robert L. Shevin was elected to the Florida House of Representatives in 1964 and served in the Florida Senate from 1966 to 1970. He also served as Florida's Attorney General from 1971-1979. In 1996, Governor Lawton Chiles appointed him to the Third District Court of Appeal, where he served with distinction until early 2005. He passed away on July 11, 2005.

Deputy A. Hagood Ellzey Memorial Highway

The portion of U.S. 19/98 South between Mile Marker 23 and Mile Marker 25 in Levy County is designated as "Deputy A. Hagood Ellzey Memorial Highway."

Deputy A. Hagood Ellzey of the Levy County Sheriff's Office was a lifelong resident of Otter Creek. On January 28, 1945, Deputy Ellzey was shot during an attempt to escort two men from a business establishment. He died of his injuries, leaving his wife and thirteen children.

Muhammed Ali Boulevard

The portion of U.S. 441/S.R. 7 between N.W. 52nd Street and N.W. 65th Street in Miami-Dade County is designated as "Muhammed Ali Boulevard."

Born Cassius Clay, Muhammad Ali became an Olympic gold medalist in 1960 and the world heavyweight-boxing champion in 1964. Ali's greatness was not limited to the boxing ring; he devoted much of his time to activism and philanthropy. He supported the Special Olympics and the Make-A-Wish Foundation and was chosen to be a United Nations Messenger of Peace because of his work in developing nations. He passed away on June 3, 2016.

Stanley G. Tate Boulevard

The portion of S.R. 922 between N.E. 10th Avenue and N. Bayshore Drive in Miami-Dade County is designated as "Stanley G. Tate Boulevard."

Stanley G. Tate, founder of Stanley Tate Builders, Inc., has been a North Miami business owner for over 30 years and has over 50 years of experience as an entrepreneur, contractor, and developer investing in the Miami-Dade County area. Additionally, Stanley Tate has actively served on numerous boards and civic and charitable organizations throughout the community.

Herman Echevarria Way

The portion of U.S. 27/S.R. 25 between W. 9th Street and E./S.E. 1st Avenue within the City of Hialeah is designated as "Herman Echevarria Way."

Herman Echevarria was a member of the City of Hialeah's Chamber of Commerce, as well as a City Councilman from 1985 to 1997. Mr. Echevarria was also a successful entrepreneur in South Florida and recognized by the Miami Business Review as one of the top 100 most influential

leaders in South Florida. Mr. Echevarria's work as a public servant, entrepreneur, business leader, philanthropist, and family man represents the ideals of the South Florida community. He passed away in September of 2016.

Robert M. Levy Memorial Boulevard

The portion of South Krome Avenue between S.W. 344th Street and S.W. 177th Court in Miami-Dade County is designated as "Robert M. Levy Memorial Boulevard."

Robert M. Levy worked as a political consultant and lobbyist who developed hundreds of campaigns across the state since 1977. He attended Valley Forge Military Academy, Pennsylvania State University, and served in the United States Army. While in the Army, he spent two and one half years in the Republic of Vietnam. Due to his heroic actions while there, he was awarded the Vietnamese Cross of Gallantry, the Silver Star, the Bronze Star, and three Purple Hearts, and was honorably discharged. Mr. Levy passed away in April of 2016.

Lieutenant Debra Clayton Memorial Highway

The portion of S.R. 438 between John Young Parkway and Pine Hills Road in Orange County is designated as "Lieutenant Debra Clayton Memorial Highway."

Debra Clayton began her career with the Orlando Police Department on May 13, 1999. She was assigned to the Patrol Services Bureau, Neighborhood Patrol, Gangs, the School Resource Unit, and the Criminal Investigations Division (Property and Crimes Against Children Units). She was promoted to the rank of Sergeant on December 1, 2007, and was assigned to the Criminal Investigations Division and the Patrol Services Bureau as Supervisor. On October 10, 2016, Debra earned the rank of Master Sergeant. During her 17 years with the Orlando Police Department, Debra was involved with Operation Positive Direction, and the Dueling Dragons Dragon Boat Team. She also organized and participated in various "Stop the Violence" rallies and was an active member of the Central Florida National Organization of Black Executives (NOBLE). Debra proudly authored a book entitled *Bridging the Gap Between Law Enforcement and the Community*, which is currently in publication. Posthumously promoted to Lieutenant, Debra Clayton was killed in the line of duty in January of this year when she encountered a murder suspect.

First Class Deputy Norman Lewis Memorial Highway

The portion of C.R. 431/Pine Hills Road between Silver Star Road and S.R. 50 in Orange County is designated as "First Class Deputy Norman Lewis Memorial Highway."

Norman Lewis received his Bachelor of Science in Criminal Justice in December of 2004. In January of 2005, he applied for sponsorship to the Law Enforcement Academy and was hired as a Deputy Sheriff recruit. He took an oath as Deputy Sheriff on August 15, 2005, promising to protect and defend the citizens of Orange County. Assigned to the Sector IV Uniform Patrol Division, he quickly established himself as a hardworking, dedicated Deputy Sheriff whose supervisors recognized him as one of the most dependable and proactive members of his squad, especially when working traffic violations. As his career progressed, Norman joined the agency's

Motor/DUI Unit, where his positive and professional attitude, couple with his traffic law knowledge, really made an impact. He was consistently recognized as a top performer in that unit, receiving an award for the most traffic stops and speeding violations, and citizens he pulled over recognized him, as well, for his attitude and demeanor. Deputy Lewis was searching for the suspect wanted for killing Lieutenant Clayton when his motorcycle collided with a vehicle that turned in front of him, killing Deputy Lewis.

C. Bette Wimbish Way

The portion of I-375/S.R. 592 between I-275 and S.R. 595/4th Avenue in Pinellas County is designated as “C. Bette Wimbish Highway.”

C. Bette Wimbish was one of the leading African-American women activists in Florida promoting the desegregation of schools and civil equality. A tough-minded woman who was determined to break the pattern of discrimination against African Americans in city employment practices, she was most commonly known as a civil rights activist, a politician, and the first African American on the St. Petersburg City Council. As well as being the first black person to hold modern elected office in the Tampa Bay area, Wimbish was also the first black female lawyer in Pinellas County, Florida. Ms. Wimbish passed away on November 30, 2009.

Joe Anderson, Jr., Memorial Highway

The portion of S.R. 349 between U.S. 98/S.R. 55 in Dixie County and S.R. 20 in Lafayette County is designated as “Joe Anderson, Jr., Memorial Highway.”

Joe Anderson, Jr., was a lifelong resident of Old Town, Florida, where he served as a member of multiple organizations benefitting the citizens of Dixie County. Mr. Anderson established Anderson Columbia Co., Inc., providing jobs for many families in Dixie County, and he was also known for his charitable giving. Mr. Anderson passed away on November 29, 2016.

Irene U. Hooper Memorial Bridges

The pair of bridges, bridge numbers 900110 and 900111, over Pine Channel on U.S. 1/S.R. 5 in Monroe County are designated as the “Irene U. Hooper Memorial Bridges.”

In 1966, Irene U. Hooper began her life-long leadership and service career by developing “Seacamp,” a year round, non-profit marine science camp and educational facility located on Big Pine Key. Today, campers 12 – 17 years old continue to enjoy numerous activities in marine science education. From 1968 to 1971, she successfully spearheaded the effort to earn an aquatic preserve designation for Coupon Bight in the Florida Keys. Over the years, her leadership and service earned her numerous recognitions, including the national Take Pride in America Award in 1986, the Florida Governor’s Environmental Education Award in 1993, and the League of Environmental Educators in Florida Founders Award for Education Leadership in 1996.

Emmitt G. Coakley Memorial Highway

The portion of U.S. 1/S.R. 15 between 5th Avenue and C.R. 108 in Nassau County is designated as “Emmitt G. Coakley Memorial Highway.”

Emmitt G. Coakley was a teacher, mentor, and principal in Nassau County who retired after 30 years of service. He returned as a substitute teacher for an additional 23 years. He served his community in many ways, including 30 years on the Nassau County Planning and Zoning Board and nine years on the Conditional Use and Variance Board. He was an active member of the Retired Teachers’ Association of Nassau County, Chairman of the Deacon Ministry of Second Baptist Church, and served his country as a member of the United States Army.

Warren E. ‘Charlie’ and Shirley Brown Memorial Highway

The portion of U.S. 98/S.R. 30 between Rosewood Drive in Okaloosa County and Sunrise Drive in Santa Rosa County is designated¹¹ as “Warren E. ‘Charlie’ and Shirley Brown Memorial Highway.”

‘Charlie’ and Shirley Brown were married for 55 years and devoted their lives to serving their community. Mr. Brown served in the U.S. Air Force for 29 years, serving in World War II, Korea, and Vietnam. Upon retirement in 1978, he and Mrs. Brown made their home in Navarre, where they served as tireless boosters for the area’s military bases and mission, supporting multiple causes to help military families. Mr. and Mrs. Brown were active in the Clean Community Program, were Master Gardeners, and were active in the Navarre Beach Area Chamber of Commerce. They served on numerous other boards and committees within the county and were members and volunteer leaders of First Baptist Church in Fort Walton Beach.

Sheriff Wendell Hall Highway

The portion of U.S. 90 from Chumuckla Highway to Woodbine Road in Santa Rosa County is designated as “Sheriff Wendell Hall Highway.”

Sheriff Hall began his law enforcement career in 1981 as a Corrections Officer with the Escambia County Sheriff’s Office. He served as a Patrol Deputy, Narcotics Investigator and Supervisor, Administrative Supervisor, Certified Hostage Negotiator, Firearms Instructor, and Field Training Officer. He received many achievement awards during his tenure with the Escambia County Sheriff’s office. Elected as Sheriff of Santa Rosa County in 2000, he is the first Sheriff in that county to be elected and re-elected to four terms. Sheriff Hall is active in his community, has received numerous civic recognitions, and is noted for his extensive volunteer service.

Senator Gerald S. ‘Jerry’ Rehm Highway

The portion of S.R. 580 in Pinellas County is designated as “Senator Gerald S. ‘Jerry’ Rehm Highway.”

¹¹ The bill revises a previous designation for Mr. Brown, with the same description, to add Mrs. Brown to the designation. See 2014-228, L.O.F.

Senator Rehm grew up in West Palm Beach. After high school, he attended the United States Merchant Marine Academy (King's Point) in New York, where he became a midshipman and played trumpet in the academy band. After graduation and serving time at sea, he returned to Florida and began his political career in Dunedin, first as a member of the Dunedin Library and Planning and Zoning Boards (1961-1962), then as a member of the City Commission (1963-1965), and ultimately serving three terms as one of Dunedin's youngest mayors (1965-1971). He ran for and won a seat in the Florida Senate (1981-1984) and the Florida House of Representatives (1986-1990). His most recent accomplishment was working diligently with Congress in the successful appropriation of funding necessary to preserve King's Point. Senator Rehm passed away on March 10, 2017.

William H. 'Bill' Mapoles Bridge

Bridge number 570172 on U.S. 90/S.R. 10 over the Yellow River in Okaloosa County is designated as "William H. 'Bill' Mapoles Bridge."

Mr. Mapoles was elected to the Florida House of Representatives in 1913 to be a Walton County representative, but he took office with the campaign theme of creating a new county by taking part of Santa Rosa and part of Walton counties to form a new county with its own county seat. After failing on a first attempt, Representative Mapoles co-introduced a bill to accomplish creation of the new county. In 1915, the new county of Okaloosa was formed. Mr. Mapoles is known as the father of Okaloosa County.

Brigadier General Thomas 'Mark' Stogsdill Memorial Overpass

Bridge number 570175 on 77th Special Forces Way over State Road 85 in Okaloosa County is designated as "Brigadier General Thomas 'Mark' Stogsdill Memorial Overpass."

Brigadier General Thomas 'Mark' Stogsdill was the former commander of the 919th Special Operations Wing at Duke Field. He was also involved in a variety of military-related charities in the Okaloosa County area. He passed away in July of 2016.

Arnold Palmer Expressway

The portion of S.R. 408 between Kirkman Road and Clarke Road in Orange County is designated as "Arnold Palmer Expressway."

Arnold Palmer was a professional golfer who spent his winters in Central Florida. He was also a philanthropist involved in charitable endeavors, including the creation and development of the Arnold Palmer Hospital for Children and the Winnie Palmer Hospital for Women & Babies. The Arnold Palmer Invitational golf tournament is annually played at Bay Hill in the Orlando area. Arnold Palmer passed away on September 26, 2016.

Rev. Dr. Thomas A. Wright Boulevard

The portion of C.R. 1476/N.E. 8th Avenue between N.E. 15th Street and N.E. 26th Terrace in Alachua County is designated as “Rev. Dr. Thomas A. Wright Boulevard.”

Reverend Wright graduated from Florida Memorial College and the Howard University School of Divinity. In the 1950's he pastored St. Mary's Baptist Church in St. Augustine, Florida, where he was a leader in the civil rights movement, helping organize sit-ins, demonstrations, and boycotts to highlight the need for social justice and equality for African-Americans. After receiving several death threats, he moved his family and became pastor of the Mount Carmel Baptist Church in Gainesville, Florida. Shortly after coming to Gainesville, Wright served as President of the Alachua County Branch of the NAACP and continued the fight for equal rights. He led Mount Carmel Church in applying for financing from the federal government to build Gardenia Gardens, a 100-unit low-income apartment development. In 2002, he joined the select company of three other African-Americans previously honored by the University of Florida with an honorary Doctor of Public Service Degree. Reverend Wright passed away on December 9, 2014.

Candice Ellize Francois Street

The portion of Palm Avenue between Pembroke Road and Miramar Parkway in Broward County is designated as “Candice Ellize Francois Street.”

Candice Ellize Francois was born on March 10, 1994, in Miami. She was in the International Baccalaureate Program in high school where she was involved in multiple school activities. Shortly after graduating from high school, she was diagnosed with a rare cancer of the jawbone. She passed away on October 26, 2014, at the age of 20.

Georgia Ayers Way

The portion of S.R. 9/N.W. 27th Avenue between S.R. 934/N.W. 79th Street and N.W. 41st Street in Miami-Dade County is designated as “Georgia Ayers Way.”

A community activist since the 1960's, Georgia Ayers was assigned to community relations boards and advisory boards to facilitate relations between the community and local police. Among Ms. Ayers' many contributions to the community, she founded the Alternative Program with a Miami-Dade Circuit judge in 1982, working with the court system to offer an alternative to jail time for people charged with nonviolent crimes. She also founded the area's Daily Bread Food Bank. Ms. Ayers recently passed away at the age of 86.

Dr. Clifford Garfield O'Connor Street

The portion of N.W. 32nd Avenue between N.W. 87th Street and N.W. 83rd Street in Miami-Dade County is designated as “Dr. Clifford Garfield O'Connor Street.”

Dr. Clifford Garfield O'Connor was a podiatrist who also assisted in training new physicians. He also participated in several medical missions to Jamaica and Haiti. He passed away on February 23, 2015, at the age of 50.

Robert 'Bobby' L. Parker, Sr., Memorial Highway

The portion of U.S. 441/S.R. 7 between N.W. 155th Lane and N.W. 151st Street in Miami-Dade County is designated as "Robert 'Bobby' L. Parker, Sr., Memorial Highway."

Robert "Bobby" Parker, Sr. joined the Miami-Dade Police Department in 1976, where he served in every civil rank in the Department, from police officer to Captain, before being appointed through the ranks of Major, Chief and Assistant Director. On April 1, 2004, he became the first African-American Director of the Miami-Dade Police Department. He honorably served the Department and his community for 33 distinguished years.

Senator Paul B. Steinberg Bridge

Bridge number 870054 on S.R. 112/W. 41st Street/Arthur Godfrey Rd. in Miami Beach is designated as the "Senator Paul B. Steinberg Bridge."

Senator Steinberg served in the Florida House of Representatives from 1972-1978 and in the Florida Senate from 1978-1982. Mr. Steinberg's law office has been adjacent to the bridge for over 30 years.

The Hope and Healing Highway

The portion of U.S. 1 between Broward Boulevard and Sunrise Boulevard in Broward County is designated as "The Hope and Healing Highway."

The designation would help empower those who travel on the stretch of road each day to the Nancy J. Cotterman Sexual Assault Treatment Center, Broward County's rape crisis and children's advocacy center, and would be a tribute to those who have been victims and are survivors, those who have not yet had the courage to seek help, and those who support the mission to end sexual abuse and to help survivors heal and thrive.

Purple Heart Trail

The portion of S.R. 60 between the Hillsborough County line and Mandalay Avenue in Pinellas County is designated as "Purple Heart Trail."

According to the Purple Heart website:

The purpose of the Purple Heart Trail is to create a symbolic and honorary system of roads, highways, bridges, and other monuments that give tribute to the men and women who have been awarded the Purple Heart medal...Signs placed at various locations annotate those roads and

highways where legislation has been passed to designate parts of the national road system as “The Purple Heart Trail.”¹²

Section 2 directs the FDOT to erect appropriate signage, at intervals determined by the FDOT, along that portion of S.R. 589/Veterans Expressway between S.R. 60 in Hillsborough County and U.S. 98 in Hernando County, commemorating each of the following conflicts involving the United States Armed Forces:

- World War I;
- World War II;
- The Korean War;
- The Vietnam War;
- Operation Desert Shield;
- Operation Desert Storm;
- Operation Enduring Freedom; and
- Operation Iraqi Freedom.

Section 3 revises a designation enacted in section 1 of chapter 1951-26497, Laws of Florida, the “Broad Causeway Boulevard” in Miami-Dade County, to the “Shepard Broad Causeway.”

The Broad Causeway was designated in honor of Shepard Broad, the founder of Bay Harbor Islands. The Town of Bay Harbor Islands and the Miami-Dade County Commission requested revision of the designation to reflect his full name.

Section 4 directs the FDOT to erect suitable markers correcting the designation as described in section 3.

Section 5 amends section 28 of chapter 2014-228, Laws of Florida, to correct the spelling of a previously enacted designation in Miami-Dade County, from the “Reverend Wilner Maxi Street,” to the “Reverend Wilner Maxy Street.”

Section 6 provides that the bill take effect on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹² See The Military Order of the Purple Heart, *Purple Heart Trail Program*, available at <http://www.purpleheart.org/PHTrail/>. (Last visited April 12, 2017.)

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The estimated cost to FDOT to erect the designation markers required under the bill, [to remove, revise, and re-install the designation markers to correct the previously enacted designations (4 signs), as well as for the 36 newly created designations (72 signs), and at least 8 signs for the commemorating markers along the Veterans Expressway¹³] is \$42,000, for a total of 84 signs at a cost of no less than \$500 each. The estimate includes sign fabrication, installation, and maintenance over time, but does not include any additional expenses related to maintenance of traffic, dedication event costs, or replacement necessitated by damage, vandalism, or storm events.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FDOT advises the following designations are not located on the State Highway System:

- Helen Gordon Davis Boulevard;
- Francisco A. Rodriguez Avenue;
- Olympian Theresa Manuel Way;
- Robert L. Shevin Memorial Boulevard;
- Rev. Dr. Thomas A. Wright Boulevard; and
- Candice Ellize Francois Street.

VIII. Statutes Affected:

The bill creates an undesignated section of Florida law.

This bill amends section 28 of chapter 2014-228, Laws of Florida.

¹³ The FDOT advises these signs will cost a minimum of \$500 each. While the bill calls for a minimum of 8 signs, the FDOT advises it has not yet determined appropriate intervals for installation of the signs. Telephone conversation with the FDOT staff, April 7, 2017.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on April 13, 2017:

The CS adds the following designations:

- “Joe Anderson, Jr., Memorial Highway” in Dixie and Lafayette Counties;
- “Irene U. Hooper Memorial Bridges” in Monroe County;
- “Emmitt G. Coakley Memorial Highway” in Nassau County;
- “Warren E. ‘Charlie’ and Shirley Brown Memorial Highway” in Santa Rosa County;
- “Sheriff Wendell Hall Highway” in Santa Rosa County;
- “Senator Gerald S. ‘Jerry’ Rehm Highway” in Pinellas County;
- “William H. ‘Bill’ Mapoles Bridge” in Okaloosa County;
- “Brigadier General Thomas ‘Mark’ Stogsdill Memorial Overpass” in Okaloosa County;
- “Arnold Palmer Expressway” in Orange County;
- “Rev. Dr. Thomas A. Wright Boulevard” in Alachua County;
- “Candice Ellize Francois Street” in Broward County;
- “Georgia Ayers Way” in Miami-Dade County;
- “Dr. Clifford Garfield O’Connor Street” in Miami-Dade County;
- “Robert ‘Bobby’ L. Parker, Sr., Memorial Highway” in Miami-Dade County;
- “Senator Paul B. Steinberg Bridge” in Miami Beach;
- “The Hope and Healing Highway” in Broward County; and
- “The Purple Heart Trail” in Pinellas County.

The CS revises a designation enacted in section 1 of chapter 1951-26497, Laws of Florida, the “Broad Causeway Boulevard” in Miami-Dade County, to the “Shepard Broad Causeway.” The CS also directs the FDOT to erect appropriate signage along portions of the Veterans Expressway to commemorate specified conflicts involving the United States Armed Forces.

CS by Transportation on February 21, 2017:

The CS adds the following designations:

- “Gulf Coast Highway” in Pasco County;
- “Helen Gordon Davis Boulevard” in Hillsborough County;
- “Francisco Rodriguez Avenue: in Hillsborough County;
- “Olympian Theresa Manuel Way” in Hillsborough County;
- “Robert L. Shevin Memorial Boulevard” in Miami-Dade County;
- “Deputy A. Hagood Ellzey Memorial Highway” in Levy County;
- “Muhammad Ali Boulevard” in Miami-Dade County;
- “Stanley G. Tate Boulevard” in Miami-Dade County;
- “Herman Echevarria Way” in Miami-Dade County;
- “Robert M. Levy Memorial Boulevard” in Miami-Dade County;
- “Lieutenant Debra Clayton Memorial Highway” in Orange County;

- “First Class Deputy Norman Lewis Memorial Highway” in Orange County; and
- “C. Bette Wimbish Highway” in Pinellas County.

The CS also makes two technical changes, one to remove reference to contingent completion of construction for the “Private First Class Joey Moody Bridge,” as construction is now completed; and one to insert a state road number for, and the county in which is located, the “Joe C. Peavy Highway” designation. The CS also corrects the spelling from “Maxi” to “Maxy” in a previously enacted designation of the Reverend Wilner Maxy Street in Miami-Dade County.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Stargel) recommended the following:

1 **Senate Amendment**

2
3 Delete line 130

4 and insert:

5 (37) That portion of S.R. 19 between S.R. 50 and C.R.
6 478/Cherry Lake Road in Lake County is designated as "Sergeant
7 Marvin L. Roberts Memorial Highway."

8 (38) The Department of Transportation is directed to erect



576-03799-17

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

A bill to be entitled

An act relating to transportation facility designations; providing honorary designations of various transportation facilities in specified counties; directing the Department of Transportation to erect suitable markers; directing the department to erect signage in specified counties to commemorate certain conflicts involving the United States Armed Forces; amending chapter 26497, Laws of Florida, 1951; revising the name of an honorary designation of a transportation facility in a specified county; amending chapter 2014-228, Laws of Florida; revising the name of an honorary designation of a transportation facility in a specified county; providing an effective date.

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

Section 1. Transportation facility designations; Department of Transportation to erect suitable markers.-

(1) Bridge number 380096 on U.S. 221/S.R. 55 over the Econfina River in Taylor County is designated as "Private First Class Joey Moody Bridge."

(2) That portion of S.R. 80 between Hickey Creek Road and Carter Lane in Lee County is designated as "Corporal Joseph R. Bertrand Memorial Highway."



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(3) That portion of Interstate 75/S.R. 93A between Fowler Avenue and Fletcher Avenue in Hillsborough County is designated as "Lieutenant Benedict J. Thomas Memorial Highway."

(4) That portion of the Homestead Extension of the Florida Turnpike/S.R. 821 between mile marker 34 and mile marker 36 in Miami-Dade County is designated as "Trooper Patrick Ambroise Memorial Highway."

(5) That portion of U.S. 98/S.R. 30 between Ryan Drive/W. 11th Street and N.E./S.E. 12th Street in Franklin County is designated as "SP4 Robert Clifford Millender Memorial Highway."

(6) That portion of S.R. 53 between U.S. 90/S.R. 10 and the Georgia state line in Madison County is designated as "Joe C. Peavy Highway."

(7) That portion of U.S. 19/S.R. 55 between the Pinellas County line and the Hernando County line in Pasco County is designated as "Gulf Coast Highway."

(8) That portion of Davis Boulevard between Adalia Avenue and Adriatic Avenue in Hillsborough County is designated as "Helen Gordon Davis Boulevard."

(9) That portion of N. Willow Avenue between W. Cypress Street and W. Cass Street in Hillsborough County is designated as "Francisco A. Rodriguez Avenue."

(10) That portion of N. Garcia Avenue between W. Palm Avenue and W. Ross Avenue in Hillsborough County is designated as "Olympian Theresa Manuel Way."

(11) That portion of Miami Avenue between N.E. 5th Street and U.S. 41/S.R. 90/S.E. 7th Street in Miami-Dade County is designated as "Robert L. Shevin Memorial Boulevard."

(12) That portion of U.S. 19/98 South between mile marker



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56 23 and mile marker 25 in Levy County is designated as "Deputy A.
57 Hagood Ellzey Memorial Highway."

58 (13) That portion of U.S. 441/S.R. 7 between N.W. 52nd
59 Street and N.W. 65th Street in Miami-Dade County is designated
60 as "Muhammad Ali Boulevard."

61 (14) That portion of S.R. 922 between N.E. 10th Avenue and
62 N. Bayshore Drive in Miami-Dade County is designated as "Stanley
63 G. Tate Boulevard."

64 (15) That portion of U.S. 27/S.R. 25 between W. 9th Street
65 and E./S.E. 1st Avenue within the City of Hialeah is designated
66 as "Herman Echevarria Way."

67 (16) That portion of S.R. 997/Krome Avenue between S.W.
68 344th Street and S.W. 177th Court in Miami-Dade County is
69 designated as "Robert M. Levy Memorial Boulevard."

70 (17) That portion of S.R. 438 between John Young Parkway
71 and Pine Hills Road in Orange County is designated as
72 "Lieutenant Debra Clayton Memorial Highway."

73 (18) That portion of C.R. 431/Pine Hills Road between
74 Silver Star Road and S.R. 50 in Orange County is designated as
75 "First Class Deputy Norman Lewis Memorial Highway."

76 (19) That portion of I-375/S.R. 592 between I-275 and S.R.
77 595/4th Avenue in Pinellas County is designated as "C. Bette
78 Wimbish Highway."

79 (20) That portion of S.R. 349 between U.S. 98/S.R. 55 in
80 Dixie County and S.R. 20 in Lafayette County is designated as
81 "Joe Anderson, Jr., Memorial Highway."

82 (21) The pair of bridges, bridge numbers 900110 and 900111,
83 over Pine Channel on U.S. 1/S.R. 5 in Monroe County is
84 designated as the "Irene U. Hooper Memorial Bridges."



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85 (22) That portion of U.S. 1/S.R. 15 between 5th Avenue and
86 C.R. 108 in Nassau County is designated as "Emmitt G. Coakley
87 Memorial Highway."

88 (23) That portion of U.S. 98/S.R. 30 between Rosewood Drive
89 in Okaloosa County and Sunrise Drive in Santa Rosa County is
90 designated as "Warren E. 'Charlie' and Shirley Brown Memorial
91 Highway."

92 (24) That portion of U.S. 90 from Chumuckla Highway to
93 Woodbine Road in Santa Rosa County is designated as "Sheriff
94 Wendell Hall Highway."

95 (25) That portion of S.R. 580 in Pinellas County is
96 designated as "Senator Gerald S. 'Jerry' Rehm Highway."

97 (26) Bridge number 570172 on U.S. 90/S.R. 10 over the
98 Yellow River in Okaloosa County is designated as "William H.
99 'Bill' Mapoles Bridge."

100 (27) Bridge number 570175 on 77th Special Forces Way over
101 State Road 85 in Okaloosa County is designated as "Brigadier
102 General Thomas 'Mark' Stogsdill Memorial Overpass."

103 (28) That portion of S.R. 408 between Kirkman Road and
104 Clarke Road in Orange County is designated as "Arnold Palmer
105 Expressway."

106 (29) That portion of C.R. 1476/N.E. 8th Avenue between N.E.
107 15th Street and N.E. 26th Terrace in Alachua County is
108 designated as "Rev. Dr. Thomas A. Wright Boulevard."

109 (30) That portion of Palm Avenue between Pembroke Road and
110 Miramar Parkway in Broward County is designated as "Candice
111 Ellize Francois Street."

112 (31) That portion of S.R. 9/N.W. 27th Avenue between S.R.
113 934/N.W. 79th Street and N.W. 41st Street in Miami-Dade County



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114 is designated as "Georgia Ayers Way."
115 (32) That portion of N.W. 32nd Avenue between N.W. 87th
116 Street and N.W. 83rd Street in Miami-Dade County is designated
117 as "Dr. Clifford Garfield O'Connor Street."
118 (33) That portion of U.S. 441/S.R. 7 between N.W. 155th
119 Lane and N.W. 151st Street in Miami-Dade County is designated as
120 "Robert 'Bobby' L. Parker, Sr., Memorial Highway."
121 (34) Bridge number 870054 on S.R. 112/W. 41st Street/Arthur
122 Godfrey Road in Miami Beach is designated as the "Senator Paul
123 B. Steinberg Bridge."
124 (35) That portion of U.S. 1 between Broward Boulevard and
125 Sunrise Boulevard, in Broward County, is designated as "The Hope
126 and Healing Highway."
127 (36) That portion of S.R. 60 between the Hillsborough
128 County line and Mandalay Avenue in Pinellas County is designated
129 as "Purple Heart Trail."
130 (37) The Department of Transportation is directed to erect
131 suitable markers designating the transportation facilities as
132 described in this section.
133 Section 2. United States Armed Forces commemoration;
134 Department of Transportation to erect appropriate signage.-
135 (1) The Department of Transportation is directed to erect
136 appropriate signage as described in subsection (2), at intervals
137 determined by the department, along that portion of S.R.
138 589/Veterans Expressway between S.R. 60 in Hillsborough County
139 and U.S. 98 in Hernando County.
140 (2) The department shall erect an appropriate sign to
141 commemorate each of the following conflicts involving the United
142 States Armed Forces:



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143 (a) World War I.
144 (b) World War II.
145 (c) The Korean War.
146 (d) The Vietnam War.
147 (e) Operation Desert Shield.
148 (f) Operation Desert Storm.
149 (g) Operation Enduring Freedom.
150 (h) Operation Iraqi Freedom.
151 Section 3. Section 1 of chapter 26497, Laws of Florida,
152 1951, is amended to read:
153 Section 1. That the following described route be and the
154 same is hereby declared, designated and established as a State
155 Road, forming a part of the connecting system of the State of
156 Florida, and shall be known as the SHEPARD BROAD CAUSEWAY
157 BOULEVARD.
158 Beginning at the intersection of State Road AIA and 96th
159 Street in Dade County, Florida, and running in a Westerly
160 direction, as nearly near as possible in a direct line, through
161 the Town of Bay Harbor Islands, Florida, across Broad Causeway,
162 spanning Biscayne Bay, and through the Town of North Miami,
163 Florida, to the point where such highway shall intersect with
164 State Road Number 7, along the most practicable and feasible
165 route to be determined by the State Road Department.
166 Section 4. The Department of Transportation is directed to
167 erect suitable markers correcting the designation of the
168 transportation facility pursuant to the amendment made to
169 section 1 of chapter 26497, Laws of Florida, 1951.
170 Section 5. Section 28 of chapter 2014-228, Laws of Florida,
171 is amended to read:



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172 Section 28. Reverend Wilner Maxy ~~Maxi~~ Street designated;
173 Department of Transportation to erect suitable markers.—

174 (1) That portion of N.E. 73rd Street between N.E. 2nd
175 Avenue and N.E. 3rd Court in Miami-Dade County is designated as
176 "Reverend Wilner Maxy ~~Maxi~~ Street."

177 (2) The Department of Transportation is directed to erect
178 suitable markers designating Reverend Wilner Maxy ~~Maxi~~ Street as
179 described in subsection (1).

180 Section 6. This act shall take effect July 1, 2017.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 368

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Montford

SUBJECT: Transportation Facility Designations

DATE: April 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Miller</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Pitts</u>	<u>Pitts</u>	<u>ATD</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pitts</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 368 creates 37 honorary designations of transportation facilities around the state and directs the Florida Department of Transportation (FDOT) to erect suitable markers designating the transportation facilities. The bill also revises two previously enacted honorary designations.

The bill also requires the FDOT to erect appropriate signage commemorating specified conflicts involving the United States Armed Forces along portions of the Veterans Expressway in Hillsborough and Hernando counties.

The FDOT will incur approximately \$43,000 in expenditures to install the designation markers required under the bill.

The effective date of the bill is July 1, 2017

II. Present Situation:

Designation of Transportation Facilities and Highways

Legislative Designation of Transportation Facilities

Section 334.071, F.S., provides that legislative designations of transportation facilities be for honorary or memorial purposes, or to distinguish a particular facility. Such designations may not be construed as requiring any action by local governments or private parties regarding the changing of any street signs, mailing addresses, or 911 emergency telephone number system listings, unless the legislation specifically provides for such changes.¹

When the Legislature establishes road or bridge designations, the Florida Department of Transportation (FDOT) is required to place markers only at the termini specified for each highway segment or bridge designated by the law creating the designation, and to erect any other markers it deems appropriate for the transportation facility.²

The FDOT may not erect the markers for honorary road or bridge designations unless the affected city or county commission enacts a resolution supporting the designation. When the designated road or bridge segment is located in more than one city or county, each affected local government must pass resolutions supporting the designations prior to installation of the markers.³

Blue Star Memorial Highway Designation

Section 335.091, F.S., authorizes the head of the FDOT, in cooperation with the Florida Federation of Garden Clubs, Inc. (Federation), to designate certain roads as Blue Star Memorial highways in honor of those individuals who have served or are serving in the Armed Forces of the United States.

The Federation is directed to submit to the FDOT routes on certain roads in the state for designation as Blue Star Memorial highways.⁴ Upon designation of a route, any member of the Federation may, with the advice, cooperation, and approval of the FDOT, erect suitable markers and beautify such memorial highway.⁵ The FDOT must then file with the Department of State a record of such roads designated as Blue Star Memorial highways.⁶

Scenic Highway Designation

The FDOT may, after consultation with other state agencies and local governments, designate public roads as scenic highways.⁷ Public roads designated as scenic highways are intended to

¹ Section 334.071(1), F.S.

² Section 334.071(2), F.S.

³ Section 334.071(3), F.S.

⁴ Section 335.091(2), F.S.

⁵ Id.

⁶ Section 335.091(3), F.S.

⁷ Section 335.093(1), F.S.

preserve, maintain, and protect a part of Florida's cultural, historical, and scenic routes for vehicular, bicycle, and pedestrian travel.⁸

The FDOT may by rule adopt appropriate criteria for the designation of scenic highways and may specify appropriate planning and design standards including corridor management plans on such scenic highways.⁹ The designation of scenic highways and the criteria adopted by the FDOT are not intended to affect or limit existing or customary uses in commercial or industrial areas that are adjacent to designated scenic highways nor is designation intended to limit the ability of local government entities to control or limit land uses in commercial or industrial areas within their jurisdictions.¹⁰

III. Effect of Proposed Changes:

Section 1 of the bill creates the following 36 honorary transportation facility designations around the state and directs the FDOT to erect suitable markers:

Private First Class Joey Moody Bridge

Bridge number 380096 on U.S. 221/S.R. 55 over the Econfina River in Taylor County is designated as "Private First Class Joey Moody Bridge."

Private First Class Joey Moody grew up in Shady Grove on the Econfina River. He attended Shady Grove Grammar School and graduated from Taylor County High School before attending the University of Florida. On June 21, 1952, PFC Moody, serving in Korea, was one of three men sent into enemy fire to repair a crucial communications line and lost his life when a mortar round exploded. He was posthumously awarded the National Defense Service Medal, the Korean Combat Medal, the Korean Battle Medal, and the Purple Heart.

Corporal Joseph R. Bertrand Memorial Highway

The portion of S.R. 80 between Hickey Creek Road and Carter Lane in Lee County is designated as "Corporal Joseph R. Bertrand Memorial Highway."

Corporal Joseph R. Bertrand was a member of the Florida Highway Patrol who served the citizens of Florida for 16 years. On December 22, 1967, Corporal Bertrand was shot and killed while conducting a driving-under-the-influence investigation on State Road 80 in Fort Myers, Florida.

Lieutenant Benedict J. Thomas Memorial Highway

The portion of Interstate 75/S.R. 93A between Fowler Avenue and Fletcher Avenue in Hillsborough County is designated as "Lieutenant Benedict J. Thomas Memorial Highway."

⁸ Id.

⁹ Section 335.093(2), F.S.

¹⁰ Section 335.093(3), F.S.

Lieutenant Benedict J. Thomas was a member of the Florida Highway Patrol who served the citizens of Florida for 11 years. On June 9, 1989, a passing car struck and killed Lieutenant Thomas while walking back to his vehicle after investigating an abandoned vehicle on Interstate 75 in Tampa, Florida.

Trooper Patrick Ambroise Memorial Highway

The portion of the Homestead Extension of the Florida Turnpike/S.R. 821 between mile marker 34 and mile marker 36 in Miami-Dade County is designated as “Trooper Patrick Ambroise Memorial Highway.”

Trooper Patrick Ambroise was a member of the Florida Highway Patrol who served the citizens of Florida for four years. On May 15, 2010, while parked in his patrol vehicle on the shoulder of northbound State Road 821, a passing vehicle veered onto the paved emergency shoulder and struck the left rear section of the patrol vehicle, killing Trooper Ambroise.

SP4 Robert Clifford Millender Memorial Highway

The portion of U.S. 98/S.R.30 between Ryan Drive/W. 11th Street and N.E./S.E. 12th Street in Franklin County is designated as “SP4 Robert Clifford Millender Memorial Highway.”

SP4 Robert Clifford Millender was inducted into the United States Army on August 7, 1968. After boot camp training, he was transferred to Vietnam, where he served for two months before being injured in a land mine explosion. He was cared for at Walter Reed General Hospital and was discharged from the Army on July 22, 1969. SP4 Millender died of his war-related injuries on January 14, 1970. He received the Purple Heart, the National Defense Service Medal, and the Vietnam Service Medal.

Joe C. Peavy Highway

The portion of S.R. 53 between U.S. 90/S.R. 10 and the Georgia state line in Madison County is designated as “Joe C. Peavy Highway.”

Joe C. Peavy served as Madison County Sheriff from 1968 until 1996 after 16 years with the Florida Highway Patrol. He was a participant in a number of Madison County organizations such as the Lions Club, the Masonic Lodge #11, the Madison Shrine Club, and the Cattleman Association, and he served as a Senior Citizens Council Board member. He passed away on November 19, 2016.

Gulf Coast Highway

The portion of U.S. 19/S.R. 55 between the Pinellas County line and the Hernando County line in Pasco County is designated as “Gulf Coast Highway.”

Following a public outreach campaign by the West Pasco Chamber of Commerce seeking input on proposed designation names for U.S. 19 within Pasco County, “Gulf Coast Highway” was

chosen as a method for reinforcing a strategy to improve the coastal image of the corridor and area and reflecting its relationship to the Gulf of Mexico as a coastal highway.

Helen Gordon Davis Boulevard

The portion of Davis Boulevard between Adalia Avenue and Adriatic Avenue in Hillsborough County is designated as “Helen Gordon Davis Boulevard.”

Helen Gordon Davis was the first woman from Hillsborough County elected to the Florida House of Representatives. She opened doors for women and minorities, confronting inequalities with poise and determination. Many in the Tampa Bay area revered Mrs. Davis, a fearless legislator. In 1952, she was the first white woman in Florida to join the NAACP at a time of civil unrest in the South. She established the Centre for Women as “The Women’s Survival Centre” to help women become financially independent. Her vision and foresight have made it possible for The Centre for Women to help more than 80,000 individuals to lead more successful and fulfilling lives. Ms. Davis passed away in May of 2015.

Francisco A. Rodriguez Avenue

The portion of N. Willow Avenue between W. Cypress Street and W. Cass Street in Hillsborough County is designated as “Francisco Rodriguez Avenue.”

Francisco Rodriguez was born in Tampa to Cuban parents who were members of Marti-Maceo. He started his career as a teacher but decided to go to law school at Howard University after returning from World War II to a segregated South where nothing had changed. At Howard, he became involved with the National Association for the Advancement of Colored People and was appointed special counsel for the southeast region in 1952, when he returned to Tampa. In 1954, following the Brown decision, he filed numerous legal actions to desegregate schools and recreational facilities in Florida. He unsuccessfully ran for office as juvenile court judge and member of the city council.

Olympian Theresa Manuel Way

The portion of N. Garcia Avenue between W. Palm Avenue and W. Ross Avenue in Hillsborough County is designated as “Olympian Theresa Manuel Way.”

Tampa native Theresa A. Manuel was an educator, coach, and Olympian. She graduated from the Tuskegee Institute, where she helped lead her school's basketball team to four consecutive conference championships, and then went onto teach locally for 35 years at both Middleton and Hillsborough high schools. However, her greatest accomplishment was being chosen as a member of the 1948 U.S. Olympic Track Team, making her the first African-American Floridian to compete in the Olympic Games, which were held that year in London. Ms. Manuel passed away on November 21, 2016, in Tampa. She was 90.

Robert L. Shevin Memorial Boulevard

The portion of Miami Avenue between N.E. 5th Street and U.S. 41/S.R. 90/S.E. 7th Street in Miami-Dade County is designated as "Robert L. Shevin Memorial Boulevard."

Robert L. Shevin was elected to the Florida House of Representatives in 1964 and served in the Florida Senate from 1966 to 1970. He also served as Florida's Attorney General from 1971-1979. In 1996, Governor Lawton Chiles appointed him to the Third District Court of Appeal, where he served with distinction until early 2005. He passed away on July 11, 2005.

Deputy A. Hagood Ellzey Memorial Highway

The portion of U.S. 19/98 South between Mile Marker 23 and Mile Marker 25 in Levy County is designated as "Deputy A. Hagood Ellzey Memorial Highway."

Deputy A. Hagood Ellzey of the Levy County Sheriff's Office was a lifelong resident of Otter Creek. On January 28, 1945, Deputy Ellzey was shot during an attempt to escort two men from a business establishment. He died of his injuries, leaving his wife and thirteen children.

Muhammed Ali Boulevard

The portion of U.S. 441/S.R. 7 between N.W. 52nd Street and N.W. 65th Street in Miami-Dade County is designated as "Muhammed Ali Boulevard."

Born Cassius Clay, Muhammad Ali became an Olympic gold medalist in 1960 and the world heavyweight-boxing champion in 1964. Ali's greatness was not limited to the boxing ring; he devoted much of his time to activism and philanthropy. He supported the Special Olympics and the Make-A-Wish Foundation and was chosen to be a United Nations Messenger of Peace because of his work in developing nations. He passed away on June 3, 2016.

Stanley G. Tate Boulevard

The portion of S.R. 922 between N.E. 10th Avenue and N. Bayshore Drive in Miami-Dade County is designated as "Stanley G. Tate Boulevard."

Stanley G. Tate, founder of Stanley Tate Builders, Inc., has been a North Miami business owner for over 30 years and has over 50 years of experience as an entrepreneur, contractor, and developer investing in the Miami-Dade County area. Additionally, Stanley Tate has actively served on numerous boards and civic and charitable organizations throughout the community.

Herman Echevarria Way

The portion of U.S. 27/S.R. 25 between W. 9th Street and E./S.E. 1st Avenue within the City of Hialeah is designated as "Herman Echevarria Way."

Herman Echevarria was a member of the City of Hialeah's Chamber of Commerce, as well as a City Councilman from 1985 to 1997. Mr. Echevarria was also a successful entrepreneur in South

Florida and recognized by the Miami Business Review as one of the top 100 most influential leaders in South Florida. Mr. Echevarria's work as a public servant, entrepreneur, business leader, philanthropist, and family man represents the ideals of the South Florida community. He passed away in September of 2016.

Robert M. Levy Memorial Boulevard

The portion of South Krome Avenue between S.W. 344th Street and S.W. 177th Court in Miami-Dade County is designated as "Robert M. Levy Memorial Boulevard."

Robert M. Levy worked as a political consultant and lobbyist who developed hundreds of campaigns across the state since 1977. He attended Valley Forge Military Academy, Pennsylvania State University, and served in the United States Army. While in the Army, he spent two and one half years in the Republic of Vietnam. Due to his heroic actions while there, he was awarded the Vietnamese Cross of Gallantry, the Silver Star, the Bronze Star, and three Purple Hearts, and was honorably discharged. Mr. Levy passed away in April of 2016.

Lieutenant Debra Clayton Memorial Highway

The portion of S.R. 438 between John Young Parkway and Pine Hills Road in Orange County is designated as "Lieutenant Debra Clayton Memorial Highway."

Debra Clayton began her career with the Orlando Police Department on May 13, 1999. She was assigned to the Patrol Services Bureau, Neighborhood Patrol, Gangs, the School Resource Unit, and the Criminal Investigations Division (Property and Crimes Against Children Units). She was promoted to the rank of Sergeant on December 1, 2007, and was assigned to the Criminal Investigations Division and the Patrol Services Bureau as Supervisor. On October 10, 2016, Debra earned the rank of Master Sergeant. During her 17 years with the Orlando Police Department, Debra was involved with Operation Positive Direction, and the Dueling Dragons Dragon Boat Team. She also organized and participated in various "Stop the Violence" rallies and was an active member of the Central Florida National Organization of Black Executives (NOBLE). Debra proudly authored a book entitled *Bridging the Gap Between Law Enforcement and the Community*, which is currently in publication. Posthumously promoted to Lieutenant, Debra Clayton was killed in the line of duty in January of this year when she encountered a murder suspect.

First Class Deputy Norman Lewis Memorial Highway

The portion of C.R. 431/Pine Hills Road between Silver Star Road and S.R. 50 in Orange County is designated as "First Class Deputy Norman Lewis Memorial Highway."

Norman Lewis received his Bachelor of Science in Criminal Justice in December of 2004. In January of 2005, he applied for sponsorship to the Law Enforcement Academy and was hired as a Deputy Sheriff recruit. He took an oath as Deputy Sheriff on August 15, 2005, promising to protect and defend the citizens of Orange County. Assigned to the Sector IV Uniform Patrol Division, he quickly established himself as a hardworking, dedicated Deputy Sheriff whose

supervisors recognized him as one of the most dependable and proactive members of his squad, especially when working traffic violations. As his career progressed, Norman joined the agency's Motor/DUI Unit, where his positive and professional attitude, couple with his traffic law knowledge, really made an impact. He was consistently recognized as a top performer in that unit, receiving an award for the most traffic stops and speeding violations, and citizens he pulled over recognized him, as well, for his attitude and demeanor. Deputy Lewis was searching for the suspect wanted for killing Lieutenant Clayton when his motorcycle collided with a vehicle that turned in front of him, killing Deputy Lewis.

C. Bette Wimbish Way

The portion of I-375/S.R. 592 between I-275 and S.R. 595/4th Avenue in Pinellas County is designated as "C. Bette Wimbish Highway."

C. Bette Wimbish was one of the leading African-American women activists in Florida promoting the desegregation of schools and civil equality. A tough-minded woman who was determined to break the pattern of discrimination against African Americans in city employment practices, she was most commonly known as a civil rights activist, a politician, and the first African American on the St. Petersburg City Council. As well as being the first black person to hold modern elected office in the Tampa Bay area, Wimbish was also the first black female lawyer in Pinellas County, Florida. Ms. Wimbish passed away on November 30, 2009.

Joe Anderson, Jr., Memorial Highway

The portion of S.R. 349 between U.S. 98/S.R. 55 in Dixie County and S.R. 20 in Lafayette County is designated as "Joe Anderson, Jr., Memorial Highway."

Joe Anderson, Jr., was a lifelong resident of Old Town, Florida, where he served as a member of multiple organizations benefitting the citizens of Dixie County. Mr. Anderson established Anderson Columbia Co., Inc., providing jobs for many families in Dixie County, and he was also known for his charitable giving. Mr. Anderson passed away on November 29, 2016.

Irene U. Hooper Memorial Bridges

The pair of bridges, bridge numbers 900110 and 900111, over Pine Channel on U.S. 1/S.R. 5 in Monroe County are designated as the "Irene U. Hooper Memorial Bridges."

In 1966, Irene U. Hooper began her life-long leadership and service career by developing "Seacamp," a year round, non-profit marine science camp and educational facility located on Big Pine Key. Today, campers 12 – 17 years old continue to enjoy numerous activities in marine science education. From 1968 to 1971, she successfully spearheaded the effort to earn an aquatic preserve designation for Coupon Bight in the Florida Keys. Over the years, her leadership and service earned her numerous recognitions, including the national Take Pride in America Award in 1986, the Florida Governor's Environmental Education Award in 1993, and the League of Environmental Educators in Florida Founders Award for Education Leadership in 1996.

Emmitt G. Coakley Memorial Highway

The portion of U.S. 1/S.R. 15 between 5th Avenue and C.R. 108 in Nassau County is designated as “Emmitt G. Coakley Memorial Highway.”

Emmitt G. Coakley was a teacher, mentor, and principal in Nassau County who retired after 30 years of service. He returned as a substitute teacher for an additional 23 years. He served his community in many ways, including 30 years on the Nassau County Planning and Zoning Board and nine years on the Conditional Use and Variance Board. He was an active member of the Retired Teachers’ Association of Nassau County, Chairman of the Deacon Ministry of Second Baptist Church, and served his country as a member of the United States Army.

Warren E. ‘Charlie’ and Shirley Brown Memorial Highway

The portion of U.S. 98/S.R. 30 between Rosewood Drive in Okaloosa County and Sunrise Drive in Santa Rosa County is designated¹¹ as “Warren E. ‘Charlie’ and Shirley Brown Memorial Highway.”

‘Charlie’ and Shirley Brown were married for 55 years and devoted their lives to serving their community. Mr. Brown served in the U.S. Air Force for 29 years, serving in World War II, Korea, and Vietnam. Upon retirement in 1978, he and Mrs. Brown made their home in Navarre, where they served as tireless boosters for the area’s military bases and mission, supporting multiple causes to help military families. Mr. and Mrs. Brown were active in the Clean Community Program, were Master Gardeners, and were active in the Navarre Beach Area Chamber of Commerce. They served on numerous other boards and committees within the county and were members and volunteer leaders of First Baptist Church in Fort Walton Beach.

Sheriff Wendell Hall Highway

The portion of U.S. 90 from Chumuckla Highway to Woodbine Road in Santa Rosa County is designated as “Sheriff Wendell Hall Highway.”

Sheriff Hall began his law enforcement career in 1981 as a Corrections Officer with the Escambia County Sheriff’s Office. He served as a Patrol Deputy, Narcotics Investigator and Supervisor, Administrative Supervisor, Certified Hostage Negotiator, Firearms Instructor, and Field Training Officer. He received many achievement awards during his tenure with the Escambia County Sheriff’s office. Elected as Sheriff of Santa Rosa County in 2000, he is the first Sheriff in that county to be elected and re-elected to four terms. Sheriff Hall is active in his community, has received numerous civic recognitions, and is noted for his extensive volunteer service.

¹¹ The bill revises a previous designation for Mr. Brown, with the same description, to add Mrs. Brown to the designation. See 2014-228, L.O.F.

Senator Gerald S. ‘Jerry’ Rehm Highway

The portion of S.R. 580 in Pinellas County is designated as “Senator Gerald S. ‘Jerry’ Rehm Highway.”

Senator Rehm grew up in West Palm Beach. After high school, he attended the United States Merchant Marine Academy (King’s Point) in New York, where he became a midshipman and played trumpet in the academy band. After graduation and serving time at sea, he returned to Florida and began his political career in Dunedin, first as a member of the Dunedin Library and Planning and Zoning Boards (1961-1962), then as a member of the City Commission (1963-1965), and ultimately serving three terms as one of Dunedin’s youngest mayors (1965-1971). He ran for and won a seat in the Florida Senate (1981-1984) and the Florida House of Representatives (1986-1990). His most recent accomplishment was working diligently with Congress in the successful appropriation of funding necessary to preserve King’s Point. Senator Rehm passed away on March 10, 2017.

William H. ‘Bill’ Mapoles Bridge

Bridge number 570172 on U.S. 90/S.R. 10 over the Yellow River in Okaloosa County is designated as “William H. ‘Bill’ Mapoles Bridge.”

Mr. Mapoles was elected to the Florida House of Representatives in 1913 to be a Walton County representative, but he took office with the campaign theme of creating a new county by taking part of Santa Rosa and part of Walton counties to form a new county with its own county seat. After failing on a first attempt, Representative Mapoles co-introduced a bill to accomplish creation of the new county. In 1915, the new county of Okaloosa was formed. Mr. Mapoles is known as the father of Okaloosa County.

Brigadier General Thomas ‘Mark’ Stogsdill Memorial Overpass

Bridge number 570175 on 77th Special Forces Way over State Road 85 in Okaloosa County is designated as “Brigadier General Thomas ‘Mark’ Stogsdill Memorial Overpass.”

Brigadier General Thomas ‘Mark’ Stogsdill was the former commander of the 919th Special Operations Wing at Duke Field. He was also involved in a variety of military-related charities in the Okaloosa County area. He passed away in July of 2016.

Arnold Palmer Expressway

The portion of S.R. 408 between Kirkman Road and Clarke Road in Orange County is designated as “Arnold Palmer Expressway.”

Arnold Palmer was a professional golfer who spent his winters in Central Florida. He was also a philanthropist involved in charitable endeavors, including the creation and development of the Arnold Palmer Hospital for Children and the Winnie Palmer Hospital for Women & Babies. The

Arnold Palmer Invitational golf tournament is annually played at Bay Hill in the Orlando area. Arnold Palmer passed away on September 26, 2016.

Rev. Dr. Thomas A. Wright Boulevard

The portion of C.R. 1476/N.E. 8th Avenue between N.E. 15th Street and N.E. 26th Terrace in Alachua County is designated as “Rev. Dr. Thomas A. Wright Boulevard.”

Reverend Wright graduated from Florida Memorial College and the Howard University School of Divinity. In the 1950's he pastored St. Mary's Baptist Church in St. Augustine, Florida, where he was a leader in the civil rights movement, helping organize sit-ins, demonstrations, and boycotts to highlight the need for social justice and equality for African-Americans. After receiving several death threats, he moved his family and became pastor of the Mount Carmel Baptist Church in Gainesville, Florida. Shortly after coming to Gainesville, Wright served as President of the Alachua County Branch of the NAACP and continued the fight for equal rights. He led Mount Carmel Church in applying for financing from the federal government to build Gardenia Gardens, a 100-unit low-income apartment development. In 2002, he joined the select company of three other African-Americans previously honored by the University of Florida with an honorary Doctor of Public Service Degree. Reverend Wright passed away on December 9, 2014.

Candice Ellize Francois Street

The portion of Palm Avenue between Pembroke Road and Miramar Parkway in Broward County is designated as “Candice Ellize Francois Street.”

Candice Ellize Francois was born on March 10, 1994, in Miami. She was in the International Baccalaureate Program in high school where she was involved in multiple school activities. Shortly after graduating from high school, she was diagnosed with a rare cancer of the jawbone. She passed away on October 26, 2014, at the age of 20.

Georgia Ayers Way

The portion of S.R. 9/N.W. 27th Avenue between S.R. 934/N.W. 79th Street and N.W. 41st Street in Miami-Dade County is designated as “Georgia Ayers Way.”

A community activist since the 1960's, Georgia Ayers was assigned to community relations boards and advisory boards to facilitate relations between the community and local police. Among Ms. Ayers' many contributions to the community, she founded the Alternative Program with a Miami-Dade Circuit judge in 1982, working with the court system to offer an alternative to jail time for people charged with nonviolent crimes. She also founded the area's Daily Bread Food Bank. Ms. Ayers recently passed away at the age of 86.

Dr. Clifford Garfield O'Connor Street

The portion of N.W. 32nd Avenue between N.W. 87th Street and N.W. 83rd Street in Miami-Dade County is designated as “Dr. Clifford Garfield O'Connor Street.”

Dr. Clifford Garfield O'Connor was a podiatrist who also assisted in training new physicians. He also participated in several medical missions to Jamaica and Haiti. He passed away on February 23, 2015, at the age of 50.

Robert ‘Bobby’ L. Parker, Sr., Memorial Highway

The portion of U.S. 441/S.R. 7 between N.W. 155th Lane and N.W. 151st Street in Miami-Dade County is designated as “Robert ‘Bobby’ L. Parker, Sr., Memorial Highway.”

Robert “Bobby” Parker, Sr. joined the Miami-Dade Police Department in 1976, where he served in every civil rank in the Department, from police officer to Captain, before being appointed through the ranks of Major, Chief and Assistant Director. On April 1, 2004, he became the first African-American Director of the Miami-Dade Police Department. He honorably served the Department and his community for 33 distinguished years.

Senator Paul B. Steinberg Bridge

Bridge number 870054 on S.R. 112/W. 41st Street/Arthur Godfrey Rd. in Miami Beach is designated as the “Senator Paul B. Steinberg Bridge.”

Senator Steinberg served in the Florida House of Representatives from 1972-1978 and in the Florida Senate from 1978-1982. Mr. Steinberg’s law office has been adjacent to the bridge for over 30 years.

The Hope and Healing Highway

The portion of U.S. 1 between Broward Boulevard and Sunrise Boulevard in Broward County is designated as “The Hope and Healing Highway.”

The designation would help empower those who travel on the stretch of road each day to the Nancy J. Cotterman Sexual Assault Treatment Center, Broward County’s rape crisis and children’s advocacy center, and would be a tribute to those who have been victims and are survivors, those who have not yet had the courage to seek help, and those who support the mission to end sexual abuse and to help survivors heal and thrive.

Sergeant Marvin L. Roberts Memorial Highway

The portion of S.R. 19 between S.R. 50 and C.R. 478/Cherry Lake Road in Lake County is designated as “Sergeant Marvin L. Roberts Memorial Highway.”

Sergeant Marvin L. Roberts was drafted into the United States Army in 1943 during World War II. On June 6, 1944 he entered combat with the 16th Infantry who invaded Europe on D-Day. Sergeant Roberts along with the servicemen of the 16th Infantry of the First Division of the Army was part of the Regiment, which gave gallant service on that day. Sergeant Roberts was killed in action in Belgium on January 15, 1945 and was interred in the United States Military Cemetery, Henri Chapelle, Belgium. Sergeant Roberts was returned home to Groveland, Florida in 1947.

Purple Heart Trail

The portion of S.R. 60 between the Hillsborough County line and Mandalay Avenue in Pinellas County is designated as “Purple Heart Trail.”

According to the Purple Heart website:

The purpose of the Purple Heart Trail is to create a symbolic and honorary system of roads, highways, bridges, and other monuments that give tribute to the men and women who have been awarded the Purple Heart medal...Signs placed at various locations annotate those roads and highways where legislation has been passed to designate parts of the national road system as “The Purple Heart Trail.”¹²

Section 2 directs the FDOT to erect appropriate signage, at intervals determined by the FDOT, along that portion of S.R. 589/Veterans Expressway between S.R. 60 in Hillsborough County and U.S. 98 in Hernando County, commemorating each of the following conflicts involving the United States Armed Forces:

- World War I;
- World War II;
- The Korean War;
- The Vietnam War;
- Operation Desert Shield;
- Operation Desert Storm;
- Operation Enduring Freedom; and
- Operation Iraqi Freedom.

Section 3 revises a designation enacted in section 1 of chapter 1951-26497, Laws of Florida, the “Broad Causeway Boulevard” in Miami-Dade County, to the “Shepard Broad Causeway.”

The Broad Causeway was designated in honor of Shepard Broad, the founder of Bay Harbor Islands. The Town of Bay Harbor Islands and the Miami-Dade County Commission requested revision of the designation to reflect his full name.

Section 4 directs the FDOT to erect suitable markers correcting the designation as described in section 3.

¹² See The Military Order of the Purple Heart, *Purple Heart Trail Program*, available at <http://www.purpleheart.org/PHTrail/>. (Last visited April 12, 2017.)

Section 5 amends section 28 of chapter 2014-228, Laws of Florida, to correct the spelling of a previously enacted designation in Miami-Dade County, from the “Reverend Wilner Maxi Street,” to the “Reverend Wilner Maxy Street.”

Section 6 provides that the bill take effect on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The estimated cost to FDOT to erect the designation markers required under the bill, [to remove, revise, and re-install the designation markers to correct the previously enacted designations (4 signs), as well as for the 37 newly created designations (74 signs), and at least 8 signs for the commemorating markers along the Veterans Expressway¹³] is \$42,000, for a total of 86 signs at a cost of no less than \$500 each. The estimate includes sign fabrication, installation, and maintenance over time, but does not include any additional expenses related to maintenance of traffic, dedication event costs, or replacement necessitated by damage, vandalism, or storm events.

¹³ The FDOT advises these signs will cost a minimum of \$500 each. While the bill calls for a minimum of 8 signs, the FDOT advises it has not yet determined appropriate intervals for installation of the signs. Telephone conversation with the FDOT staff, April 7, 2017.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FDOT advises the following designations are not located on the State Highway System:

- Helen Gordon Davis Boulevard;
- Francisco A. Rodriguez Avenue;
- Olympian Theresa Manuel Way;
- Robert L. Shevin Memorial Boulevard;
- Rev. Dr. Thomas A. Wright Boulevard; and
- Candice Ellize Francois Street.

VIII. Statutes Affected:

The bill creates an undesignated section of Florida law.

This bill amends section 28 of chapter 2014-228, Laws of Florida.

IX. Additional Information:

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

CS/CS by Appropriations on April 20, 2017:

The committee substitute adds the following designations:

- “Joe Anderson, Jr., Memorial Highway” in Dixie and Lafayette Counties;
- “Irene U. Hooper Memorial Bridges” in Monroe County;
- “Emmitt G. Coakley Memorial Highway” in Nassau County;
- “Warren E. ‘Charlie’ and Shirley Brown Memorial Highway” in Santa Rosa County;
- “Sheriff Wendell Hall Highway” in Santa Rosa County;
- “Senator Gerald S. ‘Jerry’ Rehm Highway” in Pinellas County;
- “William H. ‘Bill’ Mapoles Bridge” in Okaloosa County;
- “Brigadier General Thomas ‘Mark’ Stogsdill Memorial Overpass” in Okaloosa County;
- “Arnold Palmer Expressway” in Orange County;
- “Rev. Dr. Thomas A. Wright Boulevard” in Alachua County;
- “Candice Ellize Francois Street” in Broward County;
- “Georgia Ayers Way” in Miami-Dade County;
- “Dr. Clifford Garfield O’Connor Street” in Miami-Dade County;
- “Robert ‘Bobby’ L. Parker, Sr., Memorial Highway” in Miami-Dade County;
- “Senator Paul B. Steinberg Bridge” in Miami Beach;
- “The Hope and Healing Highway” in Broward County;
- “The Purple Heart Trail” in Pinellas County; and
- “Sergeant Marvin L. Roberts Memorial Highway” in Lake County.

The CS revises a designation enacted in section 1 of chapter 1951-26497, Laws of Florida, the “Broad Causeway Boulevard” in Miami-Dade County, to the “Shepard Broad Causeway.” The CS also directs the FDOT to erect appropriate signage along portions of the Veterans Expressway to commemorate specified conflicts involving the United States Armed Forces.

CS by Transportation on February 21, 2017:

The CS adds the following designations:

- “Gulf Coast Highway” in Pasco County;
- “Helen Gordon Davis Boulevard” in Hillsborough County;
- “Francisco Rodriguez Avenue: in Hillsborough County;
- “Olympian Theresa Manuel Way” in Hillsborough County;
- “Robert L. Shevin Memorial Boulevard” in Miami-Dade County;
- “Deputy A. Hagood Ellzey Memorial Highway” in Levy County;
- “Muhammad Ali Boulevard” in Miami-Dade County;
- “Stanley G. Tate Boulevard” in Miami-Dade County;
- “Herman Echevarria Way” in Miami-Dade County;
- “Robert M. Levy Memorial Boulevard” in Miami-Dade County;
- “Lieutenant Debra Clayton Memorial Highway” in Orange County;
- “First Class Deputy Norman Lewis Memorial Highway” in Orange County; and
- “C. Bette Wimbish Highway” in Pinellas County.

The CS also makes two technical changes, one to remove reference to contingent completion of construction for the “Private First Class Joey Moody Bridge,” as construction is now completed; and one to insert a state road number for, and the county in which is located, the “Joe C. Peavy Highway” designation. The CS also corrects the spelling from “Maxi” to “Maxy” in a previously enacted designation of the Reverend Wilner Maxy Street in Miami-Dade County.

B. Amendments:

None.

By the Committee on Transportation; and Senator Montford

596-01945-17

2017368c1

A bill to be entitled

An act relating to transportation facility designations; providing honorary designations of various transportation facilities in specified counties; directing the Department of Transportation to erect suitable markers; amending chapter 2014-228, Laws of Florida; revising the name of an honorary designation of a transportation facility in a specified county; providing an effective date.

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

Section 1. Transportation facility designations; Department of Transportation to erect suitable markers.-

(1) Bridge number 380096 on U.S. 221/S.R. 55 over the Econfina River in Taylor County is designated as "Private First Class Joey Moody Bridge."

(2) That portion of S.R. 80 between Hickey Creek Road and Carter Lane in Lee County is designated as "Corporal Joseph R. Bertrand Memorial Highway."

(3) That portion of Interstate 75/S.R. 93A between Fowler Avenue and Fletcher Avenue in Hillsborough County is designated as "Lieutenant Benedict J. Thomas Memorial Highway."

(4) That portion of the Homestead Extension of the Florida Turnpike/S.R. 821 between mile marker 34 and mile marker 36 in Miami-Dade County is designated as "Trooper Patrick Ambroise Memorial Highway."

(5) That portion of U.S. 98/S.R. 30 between Ryan Drive/W. 11th Street and N.E./S.E. 12th Street in Franklin County is

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

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designated as "SP4 Robert Clifford Millender Memorial Highway."

(6) That portion of S.R. 53 between U.S. 90/S.R. 10 and the Georgia state line in Madison County is designated as "Joe C. Peavy Highway."

(7) That portion of U.S. 19/S.R. 55 between the Pinellas County line and the Hernando County line in Pasco County is designated as "Gulf Coast Highway."

(8) That portion of Davis Boulevard between Adalia Avenue and Adriatic Avenue in Hillsborough County is designated as "Helen Gordon Davis Boulevard."

(9) That portion of N. Willow Avenue between W. Cypress Street and W. Cass Street in Hillsborough County is designated as "Francisco A. Rodriguez Avenue."

(10) That portion of N. Garcia Avenue between W. Palm Avenue and W. Ross Avenue in Hillsborough County is designated as "Olympian Theresa Manuel Way."

(11) That portion of Miami Avenue between N.E. 5th Street and U.S. 41/S.R. 90/S.E. 7th Street in Miami-Dade County is designated as "Robert L. Shevin Memorial Boulevard."

(12) That portion of U.S. 19/98 South between mile marker 23 and mile marker 25 in Levy County is designated as "Deputy A. Hagood Ellzey Memorial Highway."

(13) That portion of U.S. 441/S.R. 7 between N.W. 52nd Street and N.W. 65th Street in Miami-Dade County is designated as "Muhammad Ali Boulevard."

(14) That portion of S.R. 922 between N.E. 10th Avenue and N. Bayshore Drive in Miami-Dade County is designated as "Stanley G. Tate Boulevard."

(15) That portion of U.S. 27/S.R. 25 between W. 9th Street

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59 and E./S.E. 1st Avenue within the City of Hialeah is designated
60 as "Herman Echevarria Way."

61 (16) That portion of S.R. 997/Krome Avenue between S.W.
62 344th Street and S.W. 177th Court in Miami-Dade County is
63 designated as "Robert M. Levy Memorial Boulevard."

64 (17) That portion of S.R. 438 between John Young Parkway
65 and Pine Hills Road in Orange County is designated as
66 "Lieutenant Debra Clayton Memorial Highway."

67 (18) That portion of C.R. 431/Pine Hills Road between
68 Silver Star Road and S.R. 50 in Orange County is designated as
69 "First Class Deputy Norman Lewis Memorial Highway."

70 (19) That portion of I-375/S.R. 592 between I-275 and S.R.
71 595/4th Avenue in Pinellas County is designated as "C. Bette
72 Wimbish Highway."

73 (20) The Department of Transportation is directed to erect
74 suitable markers designating the transportation facilities as
75 described in this section.

76 Section 2. Section 28 of chapter 2014-228, Laws of Florida,
77 is amended to read:

78 Section 28. Reverend Wilner Maxy ~~Maxi~~ Street designated;
79 Department of Transportation to erect suitable markers.-

80 (1) That portion of N.E. 73rd Street between N.E. 2nd
81 Avenue and N.E. 3rd Court in Miami-Dade County is designated as
82 "Reverend Wilner Maxy ~~Maxi~~ Street."

83 (2) The Department of Transportation is directed to erect
84 suitable markers designating Reverend Wilner Maxy ~~Maxi~~ Street as
85 described in subsection (1).

86 Section 3. This act shall take effect July 1, 2017.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/CS/SB 400 (411446)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Regulated Industries Committee; and Senator Perry

SUBJECT: Alcoholic Beverages

DATE: April 19, 2017 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Betta</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 400 provides Select Exempt Service status to the following employees of the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR): chiefs, assistant chiefs, regional managers (including majors), and district or office managers (including captains).

The bill adds the Agency for Health Care Administration as one of the agencies from which an applicant for an alcoholic beverage license for consumption on premises must obtain a certificate that the applicant's place of business meets all sanitary requirements.

Existing law requires that a caterer licensed to sell beer, wine, and distilled spirits must derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. The bill provides that the percentage is based on a caterer's "gross food and nonalcoholic beverage revenue" instead of "gross revenue." A caterer must comply with the 51 percent requirement for each catered event.

Regarding a caterer's license to sell beer, wine and, distilled spirits, the bill expands the types of records that must be maintained to demonstrate compliance with its license. It requires that a caterer maintain all records and receipts for each catered event, including all contracts, customers' names, locations, dates, food purchases and sales, alcoholic beverage purchases and

sales, nonalcoholic beverage purchases and sales, and any other records required by rule of the DBPR.

The bill also:

- Repeals the fee for a temporary license issued in connection with an application to transfer an alcoholic beverage to the purchaser of a licensed business or to change the type or series of a license;
- Revises the definition of “wine” to include “sake” which is a Japanese alcoholic beverage made of fermented rice;
- Repeals the wine container limits, which under current law are limited to containers that hold no more than one gallon, unless it is in a reusable container that holds 5.16 gallons;
- Permits the sale of cider in 32 ounce, 64 ounce, or one gallon growlers in the same manner and with the same restrictions applicable to malt beverages;
- Repeals the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine, but retains the requirement that the restaurant patron purchase a meal with the bottle of wine; and
- Reduces the annual license tax for a craft distillery from \$4,000 to \$1,000.

On March 24, 2017, the Revenue Estimating Conference considered PCS/HB 689, the substantive provisions of which were similar sections 4 and 8 of CS/SB 400. The Conference estimated the bill will reduce revenues by approximately \$351,500 annually. *See* Section V.

The effective date of the bill is July 1, 2017.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The division¹ administers and enforces the Beverage Law,² which regulates the manufacture, distribution, and sale of wine, beer, and liquor. The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

State Employment

Parts I – V of ch. 110, F.S., provide the system of personnel management in the state. Part I contains general state employment provisions; part II addresses the Career Service System; part III deals with the Senior Management Service System; part IV relates to volunteers; and part V establishes the Select Exempt Service System.

The terms “career service” and “career service employee” are not defined in the statutes. A “career service employee” who has satisfactorily completed at least a one-year probationary period may only be suspended or dismissed for cause. Cause includes negligence, inefficiency or inability to perform assigned duties, insubordination, willful violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or

¹ Section 561.02, F.S. Section 561.01(6), F.S., provides that the “Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² *See* s. 561.14, F.S.

conviction of any crime.³ Career service employees are entitled a grievance process⁴ and the right to appeal a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal.⁵

Section 110.205(2), F.S., lists the personnel positions that are exempt from the career service classification, including all members, officers, and employees of the Legislature. The career service classification also does not include assistant division directors, deputy division directors, and bureau chief positions in any department, and those positions determined by a department to have managerial responsibilities comparable to those positions.⁶ Each department head may exempt a maximum of 20 policymaking or managerial positions from the Career Service System.⁷

Select Exempt Service is a separate system of personnel administration for positions that are exempt from the Career Service System and have duties and responsibilities that are managerial/policymaking, professional, or nonmanagerial/nonpolicymaking.⁸ Employees in the Select Exempt Service serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotions, transfer, or other personnel action at the discretion of the agency head.⁹

Alcoholic Beverage License Applications – Sanitation Safety Certificate

Section 561.17(2), F.S., requires that alcoholic beverage licenses for consumption on the premises include a certificate from the Division of Hotels and Restaurants of the DBPR, the Department of Agriculture and Consumer Services, the Department of Health (DOH), or the county health department that the place of business meets all of the sanitary requirements of the state.

Chapter 2010-161, L.O.F., amended the food service establishment inspection jurisdiction of the DOH to more explicitly delineate the food service establishment entities inspected by DOH, which effectively excluded hospitals and nursing homes. Hospitals and certain nursing homes are licensed under the jurisdiction of the Agency for Health Care Administration (AHCA) and, following the 2010 legislation, are subject to inspection for the storage, preparation, serving, and display of food within AHCA's licensure and inspection processes. Chapter 2010-161, L.O.F., and subsequent laws did not amend s. 561.17(2), F.S., to include the new jurisdiction of AHCA as the agency with the primary jurisdiction for certification on these requirements at nursing homes and hospitals.

³ Section 110.227(1), F.S.

⁴ Section 110.227(4), F.S.

⁵ Sections 110.227(5) and (6), F.S.,

⁶ Section 110.205(2)(m), F.S.

⁷ Section 110.205(2)(n), F.S., provides that policymaking or managerial positions are defined by the Department of Management Services and approved by the Administration Commission. Created in 14.202, F.S., the Administration Commission is part of the Executive Office of the Governor and is composed of the Governor and Cabinet.

⁸ Section 110.602, F.S.

⁹ Section 110.604, F.S.

Caterers and Food Service Establishments

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as “quota” licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes its status from a county that does not permit the sale of intoxicating liquor to one that permits such sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation.

The limitation on the number of quota licenses per county does not apply to a food service establishment that has 2,500 square feet, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages, during the first 60-day operating period and each 12-month operating period thereafter. This type of license is known as a “special restaurant license” or an “SRX license.” A food service establishment holding an SRX license issued after January 1, 1958, may not operate a package store under the license and may not sell intoxicating beverages after the hours of serving or consumption of food have elapsed. Failure by a licensee to satisfy the requirements as to the percentages of food and nonalcoholic beverages results in revocation of the special license. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation.¹⁰

The annual fee for an SRX license varies from \$624 to \$1,820, depending upon the population of the county in which the food service establishment is located.

In addition, the limitation on the number of quota licenses per county does not apply to a caterer licensed by the Division of Hotels and Restaurants under ch. 509, F.S., who derives at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages, and sells or serves beer, wine, and distilled spirits only for consumption on the premises of a catered event at which the licensee provides prepared food. Current law does not specify the period during which the 51 percent requirement applies. In contrast, the quota license exception for restaurants requires that a restaurant derive at least 51 percent of its gross food and beverage revenue from the sale of food and non-alcoholic beverages for the initial 60-day operating period and each subsequent 12-month period.¹¹

A caterer must also prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages.¹²

The annual fee is \$1,820 for a caterer’s alcoholic beverage license to sell or serve beer, wine, and distilled spirits on the premises of events at which the caterer provides prepared food.¹³

¹⁰ Section 565.02(1)(b) – (f), F.S.

¹¹ Section 561.20(2)(a)4., F.S.

¹² Section 561.20(2)(a)5., F.S.

¹³ See ss. 561.20(2)(a)5., and 565.02(1)(b), F.S.

A caterer is required to maintain for three years all records required by the rule of the DBPR to demonstrate compliance with its license requirements.

Temporary License Application Fees

An alcoholic beverages licensee may sell its licensed business and transfer its alcoholic beverages license to the purchaser of the business.¹⁴ Section 561.331(1), F.S., provides the process for license transfers. The applicant for a transfer is entitled as a matter of right to receive a temporary license of the same type and series as that held by the seller of the business if the application does not on its face disclose a reason for denying the application. The temporary license is valid until the application is denied or 14 days after the initial approval of temporary license. The fee for a temporary license transferred to the purchaser of a business is \$100.

However, before the license is transferred, the purchaser of a beer, wine, or beer and wine license must pay a transfer fee of 10 percent of the annual license tax to the division. The fee to transfer a quota license is assessed on the average annual value of gross sales of alcoholic beverages for the license in the three years immediately preceding transfer. The fee is levied at the rate of four mills (four one-thousandths of a dollar), but the transfer fee may not exceed \$5,000. An applicant may elect to pay \$5,000 in lieu of the four-mill assessment.¹⁵

An alcoholic beverage licensee may receive a temporary license upon an application to change the location of a license if the application does not on its face disclose a reason to deny the application. There is no temporary license fee to change the location of a license.¹⁶

An alcoholic beverages licensee may also apply to change the type or series of an alcoholic beverage license. The division may issue the temporary licenses if the application does not on its face disclose a reason to deny the application. These temporary licenses are valid until the application is denied or 14 days after the initial temporary license approval.¹⁷ If the fee for the new license is greater than the fee of the license held by the applicant, the temporary license fee is \$100 or one-fourth of the difference between the license fees, whichever is greater. A fee for the temporary license is not required if the license fee is the same as or less than the license fee for the license then held by the applicant.¹⁸

Wine and Cider Containers

Section 564.05, F.S., prohibits the sale of wine in an individual container that hold more than one gallon of wine. However, wine may be sold in a reusable container that holds 5.16 gallons. Distributors and manufacturers may sell wine to other distributors and manufacturers in

¹⁴ Section 561.32, F.S.

¹⁵ Section 561.331(1), F.S.

¹⁶ Section 561.331(2), F.S.

¹⁷ Section 561.331(3), F.S.

¹⁸ *Id.*

containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.¹⁹

Section 564.055, F.S., prohibits the sale of cider²⁰ at retail in any individual container that holds more than 32 ounces of cider. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container that holds one gallon or more of cider, regardless of container type.

Growlers

Malt beverages must be sold or offered for sale in containers that hold no more than 32 ounces, but malt beverages may be packaged and sold in bulk, in kegs or barrels, or in any individual container that contains one gallon or more of cider, regardless of individual container type.²¹

However, malt beverages may also be sold or offered for sale in a “growler,” which is a 32 ounce, 64 ounce, or 128 ounce malt beverage container that is filled or refilled at the point of sale. Growlers must identify or be imprinted or labeled with certain information, including the percentage of alcohol by volume, and have an unbroken seal or be incapable of being immediately consumed.²²

Wine and Sake

“Wine” means all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States. “Wine” includes all sparkling wines, champagnes, combination of these beverages, vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste. The ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.²³

A “fortified wine” is a wine containing more than 17.259 percent of alcohol by volume.²⁴

¹⁹ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is a fine not to exceed \$500.

²⁰ Section 564.06(4), F.S., provides that “cider” is “made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including but not limited to flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must, that contain not less than one-half of 1 percent of alcohol by volume and not more than 7 percent of alcohol by volume.” “Must” is the expressed juice of a fruit before and during fermentation. *See* <https://www.merriam-webster.com/dictionary/must> (last visited March 16, 2017).

²¹ Section 563.06(6), F.S.

²² Section 563.06(7), F.S.

²³ Section 564.01(1), F.S.

²⁴ Section 564.01(2), F.S.

“Sake” is a Japanese alcoholic beverage made of fermented rice.²⁵ As of February 2017, there are approximately 573 alcoholic beverage brand registrations in Florida for brand names referencing the term “sake.”²⁶

The division currently collects excise taxes on sake products pursuant to s. 564.06(1), F.S., which relates to the excise taxes on wines and beverages.²⁷ Wines, except natural sparkling wines, cider and malt beverages, containing 0.5 percent or more alcohol by volume and less than 17.259 percent alcohol by volume, are taxed at the rate of \$2.25 per gallon.²⁸ Wines, except natural sparkling wines, containing 17.259 percent or more alcohol by volume, are taxed at the rate of \$3.00 per gallon.²⁹ Natural sparkling wines are taxed at the rate of \$3.50 per gallon.³⁰

Restaurants - Off-Premises Consumption of Wine

Restaurants licensed to sell wine on the premises may permit patrons to remove one bottle of wine for consumption off the licensed premises under the following conditions:

- The patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- Before the partially-consumed bottle of wine is removed from the premises, the bottle must be securely resealed by the licensee, or the licensee’s employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- A dated receipt for the wine and meal must be attached to the container; and
- The container must be placed in a locked glove compartment, trunk, or other area behind the last upright seat of a motor vehicle that does not have a trunk.³¹

Craft Distilleries

Section 565.01, F.S., defines the terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” to mean “that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.”

A “distillery” is a manufacturer of distilled spirits,³² and a “craft distillery” is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. A distillery must notify the division in writing of its decision to qualify as a craft distillery.³³

Distilleries and craft distilleries pay the same amount of state license tax. All distilleries engaged solely in the business of manufacturing distilled spirits, or engaged in the business of blending

²⁵ See <https://www.merriam-webster.com/dictionary/sake> (last visited April 12, 2017).

²⁶ See Revenue Estimating Conference, *Sake Reference in Chapter 564, F.S., Definition of Wine*, page 501 (April 4, 2017) http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0407.pdf (last visited April 12, 2017).

²⁷ *Id.*

²⁸ Section 564.06(1), F.S.

²⁹ Section 564.06(2), F.S.

³⁰ Section 564.06(3), F.S.

³¹ Section 564.09, F.S.

³² Section 565.03(1)(c), F.S.

³³ Section 565.03(1)(b), F.S.

and rectifying³⁴ distilled spirits must pay a state license tax of \$4,000 for each plant or branch operating in Florida. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.³⁵

A craft distillery may sell to consumers branded products³⁶ distilled on the licensed premises. The products must be in factory-sealed containers filled at the distillery and sold for off-premises consumption.³⁷ The sales must occur at the distillery's souvenir gift shop located on private property contiguous to the licensed distillery premises, and included on the sketch submitted with the license application.³⁸ The craft distillery is not required to obtain, in addition to its manufacturer's license, a vendor's license in order to sell distilled spirits to consumers. Sales must be in face-to-face transactions with consumers³⁹ who are making a purchase of no more than:

- Two individual containers of each branded product;
- Three individual containers of a single branded product and up to one individual container of a second branded product; or
- Four individual containers of a single branded product.⁴⁰

There are 17 distilleries currently designated as craft distilleries, and an additional 21 licensed distilleries that produce fewer than 75,000 gallons of distilled spirits a year.⁴¹

III. Effect of Proposed Changes:

Division Personnel

Section 1 amends s. 561.11(2), F.S., dealing with the power and authority of the division, to provide Select Exempt Service status to chief, assistant chiefs, regional managers (including majors), and district or office managers (including captains). This means these positions become at-will employees. These positions are eligible for greater benefits relating to health insurance, disability, and leave.

Alcoholic Beverage License Applications – Sanitation Safety Certificate

Section 2 amends s. 561.17(2), F.S., to add the Agency for Health Care Administration as one of the agencies from which an applicant for a consumption on premises license must obtain a certificate that its place of business meets all sanitary requirements.

³⁴ Merriam-Webster defines rectify as the purification (of alcohol) especially by repeated or fractional distillation, *available at* <http://www.merriam-webster.com/dictionary/rectify> (last visited February 15, 2017).

³⁵ Section 565.03(3), F.S.

³⁶ Section 565.03(1)(a), F.S., defines “branded product” to mean “any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations.”

³⁷ Section 565.03(1)(c), F.S.

³⁸ *Id.*

³⁹ Section 565.03(1)(c)4., F.S.

⁴⁰ Section 565.03(1)(c)1., F.S.

⁴¹ See 2017 Agency Legislative Bill Analysis issued by the DBPR for CS/SB 400, dated March 31, 2017 (on file with Senate Appropriations Subcommittee on General Government) at page 11.

Caterers

Section 3 amends s. 561.20(2)(a)5., F.S., to revise the method used to calculate the percentage of food and nonalcoholic beverages sold by a caterer licensed to sell beer, wine, and distilled spirits. It provides that the percentage is based on a caterer's gross food and nonalcoholic beverages revenue. A caterer must comply with the 51 percent requirement for each catered event.

The bill expands the types of records that a caterer must maintain to demonstrate compliance with its license. A caterer must maintain all records and receipts for each catered event, including all contracts, customers' names, locations, dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by rule of the DBPR.

Temporary License Application Fees

Section 4 amends s. 561.331(1), F.S., to repeal the \$100 fee for a temporary alcoholic beverage license issued in connection with the transfer of a license to the purchaser of a licensed business. It also repeals the fees in s. 561.331(3), F.S., for a temporary license issued in connection with an application to change the type or series of a license.

Wine and Sake

Section 5 amends the definition of "wine" in s. 564.01(1), F.S., to include sake.

Wine Containers

Section 6 repeals the wine container size limits in s. 565.055, F.S.

Cider Containers

Section 7 amends s. 564.055, F.S., to permit cider to be packaged, filled, refilled, or sold in 32 ounce, 64 ounce, and one gallon growlers in the same manner and under the same restrictions authorized for malt beverages under s. 563.06(7), F.S.

Restaurants - Off-Premises Consumption of Wine

Section 8 amends s. 564.09, F.S., to repeal the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine. The bill retains the requirement that the restaurant patron purchase a meal with the bottle of wine.

Craft Distilleries

Section 9 amends s. 565.03(2)(a)1., F.S., to reduce the annual license tax for a craft distillery from \$4,000 to \$1,000 if the craft distillery is distilling and bottling all of its distilled products in containers approved for sale.

Effective Date

Section 10 provides the bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill repeals the \$100 license fee for a temporary alcoholic beverage license issued in connection with the transfer of a license to the purchaser of a licensed business. The bill also repeals the fee for a temporary license issued in connection with an application to change the type or series of license. This temporary license fee is \$100 or one-fourth of the difference between the license fees, whichever is greater, if the fee for the new license is greater than the fee for the license held by the applicant. A fee for the temporary license is not required if the license fee is the same as or less than the license fee for the license then held by the applicant.

The bill reduces the annual license tax for a craft distillery from \$4,000 to \$1,000 if the craft distillery is distilling and bottling all of its distilled products in containers approved for sale.

B. Private Sector Impact:

Fee Elimination for Temporary Licenses⁴²

Licensees will save at least \$100 or more on each temporary license in these license transactions.

In addition, licensees may see increased sales revenue due to the continued operation of businesses throughout their modification of licenses.

⁴² *Id* at page 8.

Craft Distilleries⁴³

Craft distilleries that qualify for the craft distillery designation will see a 75 percent reduction in the annual license fee for a distillery license, or a savings of \$3,000 per license each year.

C. Government Sector Impact:

Division Personnel⁴⁴

The bill provides Select Exempt Service (SES) status to specified employees of the division. The DBPR estimates that the conversion of Career Service positions to SES positions will cost between \$5,499 and \$19,800 annually, depending on how many of the 11 positions choose single health insurance coverage and how many choose family health coverage, but it believes this additional cost can be absorbed within existing resources.

	Career Service 11 FTE	Select Exempt 11 FTE	Benefit Increase
Single (low estimate)	84,854.88	90,354.00	5,499.12
Family (high estimate)	182,107.20	201,907.20	19,800.00

Additionally, there may be an occasional increase in cost for annual leave payouts at the time of separation. Any increase is anticipated by the DBPR to be minimal.⁴⁵

Temporary License Application Fees

The DBPR states that the revenue from temporary licenses issued in connection with an application for a more expensive license type or series varies by year based on individual licensee circumstances and business discretion. Temporary license fees and transfer fees were \$191,600 for Fiscal Year 2014-2015 and \$251,300 for Fiscal Year 2015-2016.⁴⁶

Current law requires that 24 percent of the license tax collected in a county for a manufacturer’s license or the vendor’s license authorized in the bill be returned to the appropriate county tax collector.⁴⁷ Thirty-eight percent of the license taxes collected within a municipality for those types of licenses are returned to the appropriate municipal officer.⁴⁸ The state receives the remaining revenue from those licenses, and that revenue is credited to the Alcoholic Beverage and Tobacco Trust Fund (AB&T TF) for the operation of the division and the DBPR.

Assuming issuance of the same number of temporary licenses as the division issued in Fiscal Year 2015-2016, the bill may reduce annual license tax revenue returned to counties and municipalities by up to \$60,312 and \$95,494, respectively, with a reduction in payments to the AB&T TF of \$95,494.

⁴³ *Id.*

⁴⁴ *Id.* at page 10.

⁴⁵ *Id.*.

⁴⁶ *Id.*

⁴⁷ Section 561.342(1), F.S.

⁴⁸ Section 561.342(2), F.S.

Wine and Sake

On April 7, 2017, the Revenue Estimating Conference determined that revising the definition of wine to include sake would have no impact on state revenue.⁴⁹

Craft Distilleries

The bill reduces the annual license tax for a craft distillery from \$4,000 to \$1,000 if the craft distillery is distilling and bottling all of its distilled products in containers approved for sale. The DBPR states that there are 17 distilleries currently designated as a craft distillery, and an additional 21-licensed distilleries that produce fewer than the 75,000 gallons of distilled spirits a year required to qualify as a craft distillery, for a total of 38 distilleries that may be affected by the fee reduction.⁵⁰ The DBPR anticipates that the fee reduction will result in an \$114,000 revenue reduction if the 21 distilleries that are currently not designated as craft distillery become designated as such.

The DBPR anticipates the reduction may cause license taxes returned to counties and municipalities to be reduced annually by up to \$27,360 and \$43,320, respectively, and the reduction in payments to the AB&T TF to be \$43,320.

Total Revenue Impact

In total, the bill will reduce net revenue to the AB&T TF by \$138,814. The bill also will result in a decrease in General Revenue of approximately \$11,105, due to the eight percent service charge for General Revenue. The bill will result in a decrease in taxes returned to counties and municipalities of approximately \$216,486.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 561.11, 561.17, 561.20, 561.331, 564.01, 564.055, and 565.03.

This bill repeals section 564.05 of the Florida Statutes.

⁴⁹See Revenue Estimating Conference, *Sake Reference in Chapter 564, F.S., Definition of Wine*, page 501 (April 4, 2017) http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0407.pdf

⁵⁰ See 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 400, dated February 15, 2017 (on file with Senate Committee on Regulated Industries) at page 10.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on April 13, 2017:

The committee substitute amends the definition of “wine” in s. 564.01(1), F.S., to include sake.

CS by Regulated Industries on March 15, 2017:

The committee substitute (CS):

- Retains current law in s. 561.20(2)(a)4., F.S., which provides that the minimum square footage for a food service establishment to qualify for a special license is 2,500 square feet and the minimum equipped serving capacity is 150 persons.
- Amends s. 561.331(3), F.S., to provide that a temporary license may be issued in connection with an application to change the type or series of a license without the assessment of any additional fee or tax.
- Repeals the wine containers size limitations in s. 565.05, F.S.
- Amends s. 564.055, F.S., to permit cider to be packaged, filled, refilled, or sold in 32 ounce, 64 ounce, and one gallon growlers in the same manner and under the same restrictions authorized for malt beverages under s. 563.06(7), F.S.
- Amends s. 564.09, F.S., to repeal the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine. The CS retains the requirement that the restaurant patron must purchase a meal with the bottle of wine.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/20/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Perry) recommended the following:

Senate Amendment (with title amendment)

Between lines 335 and 336
insert:

Section 5. Paragraph (c) of subsection (2) of section 562.13, Florida Statutes, as amended by Senate Bill 106 or similar legislation, enacted in the 2017 Regular Session or an extension thereof, is amended to read:

562.13 Employment of minors or certain other persons by certain vendors prohibited; exceptions.—



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11 (2) This section shall not apply to:
12 (c) 1. Persons under the age of 18 years who are employed in
13 a retail drugstore, grocery store, department store, florist
14 shop, specialty gift shop, or automobile service station whose
15 license fees are specified in s. ~~563.02(1), s. 564.02(1), or s.~~
16 565.02(1) (a), if such vendor derives 30 percent or less of its
17 monthly gross revenue from sales of alcoholic beverages. This
18 exception applies only if the minor employees are supervised by
19 a person 18 years of age or older who verifies that any
20 purchaser of alcoholic beverages is 21 years of age or older and
21 who approves the sale of alcoholic beverages to such purchaser;
22 however, the requirement for supervision and approval does not
23 apply to sales of beer and wine. Failure to comply with the
24 restriction on monthly revenue from the sale of alcoholic
25 beverages is unlawful if a person under the age of 18 years is
26 employed in the licensed premises during a month that the
27 restriction is exceeded.
28 2. Persons under the age of 18 years who are employed in a
29 retail drug store, grocery store, department store, florist
30 shop, specialty gift shop, or automobile service station that
31 has obtained a license only to sell beer or beer and wine, when
32 such sales are made for consumption off the premises.
33
34 However, a minor to whom this subsection otherwise applies may
35 not be employed if the employment, whether as a professional
36 entertainer or otherwise, involves nudity, as defined in s.
37 847.001, on the part of the minor and such nudity is intended as
38 a form of adult entertainment.
39



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

41 And the title is amended as follows:

42 Between lines 18 and 19

43 insert:

44 amending s. 562.13, F.S.; revising applicability to
45 specify circumstances under which persons under the
46 age of 18 years who are employed in specified
47 businesses are excluded from certain employment
48 prohibitions;



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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to alcoholic beverages; amending s. 561.11, F.S.; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to appoint division personnel; requiring specified personnel to have Selected Exempt Service status; amending s. 561.17, F.S.; revising the entities that may issue a certificate indicating an alcoholic beverage license applicant's place of business meets all of the sanitary requirements of the state; amending s. 561.20, F.S.; revising who may be issued a special license in counties otherwise subject to limits on the number of licenses issued; revising the requirements for retaining certain business records; amending s. 561.331, F.S.; requiring certain temporary beverage licenses to be issued by the district supervisor of a district without assessing additional fees or taxes; amending s. 564.01, F.S.; redefining the term "wine"; repealing s. 564.05, F.S., relating to limitations on the size of individual wine containers; amending s. 564.055, F.S.; authorizing the packaging, filling, refilling, or sale, of cider in growlers; amending s. 564.09, F.S.; revising provisions authorizing a restaurant to allow a patron to remove a resealed wine container from a restaurant for off-premises consumption; amending s. 565.03, F.S.; specifying the



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state license tax for craft distilleries; providing an effective date.

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

Section 1. Subsection (2) of section 561.11, Florida Statutes, is amended to read:

561.11 Power and authority of division.—

(2) The division shall have full power and authority to provide for the continuous training, appointment, and upgrading of all division personnel in their respective positions with the division. Notwithstanding any other law, chiefs, assistant chiefs, regional managers, including majors, and district or office managers, including captains, shall have Selected Exempt Service status in the state personnel designation. The ~~This~~ training shall include the attendance of division personnel at workshops, seminars, or special schools established by the division or other organizations when attendance at such educational programs shall in the opinion of the division be deemed appropriate to the particular position that which the employee holds.

Section 2. Subsection (2) of section 561.17, Florida Statutes, is amended to read:

561.17 License and registration applications; approved person.—

(2) All applications for alcoholic beverage licenses for consumption on the premises shall be accompanied by a certificate of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation or the



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57 Department of Agriculture and Consumer Services or the
58 Department of Health or the Agency for Health Care
59 Administration or the county health department that the place of
60 business wherein the business is to be conducted meets all of
61 the sanitary requirements of the state.

62 Section 3. Paragraph (a) of subsection (2) of section
63 561.20, Florida Statutes, is amended to read:

64 561.20 Limitation upon number of licenses issued.-

65 (2)(a) The limitation of the number of licenses as provided
66 in this section does not prohibit the issuance of a special
67 license to:

68 1. Any bona fide hotel, motel, or motor court of not fewer
69 than 80 guest rooms in any county having a population of less
70 than 50,000 residents, and of not fewer than 100 guest rooms in
71 any county having a population of 50,000 residents or greater;
72 or any bona fide hotel or motel located in a historic structure,
73 as defined in s. 561.01(21), with fewer than 100 guest rooms
74 which derives at least 51 percent of its gross revenue from the
75 rental of hotel or motel rooms, which is licensed as a public
76 lodging establishment by the Division of Hotels and Restaurants;
77 provided, however, that a bona fide hotel or motel with no fewer
78 than 10 and no more than 25 guest rooms which is a historic
79 structure, as defined in s. 561.01(21), in a municipality that
80 on the effective date of this act has a population, according to
81 the University of Florida's Bureau of Economic and Business
82 Research Estimates of Population for 1998, of no fewer than
83 25,000 and no more than 35,000 residents and that is within a
84 constitutionally chartered county may be issued a special
85 license. This special license shall allow the sale and



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86 consumption of alcoholic beverages only on the licensed premises
87 of the hotel or motel. In addition, the hotel or motel must
88 derive at least 60 percent of its gross revenue from the rental
89 of hotel or motel rooms and the sale of food and nonalcoholic
90 beverages; provided that ~~the provisions of~~ this subparagraph
91 shall supersede local laws requiring a greater number of hotel
92 rooms;

93 2. Any condominium accommodation of which no fewer than 100
94 condominium units are wholly rentable to transients and which is
95 licensed under ~~the provisions of~~ chapter 509, except that the
96 license shall be issued only to the person or corporation which
97 operates the hotel or motel operation and not to the association
98 of condominium owners;

99 3. Any condominium accommodation of which no fewer than 50
100 condominium units are wholly rentable to transients, which is
101 licensed under ~~the provisions of~~ chapter 509, and which is
102 located in any county having home rule under s. 10 or s. 11,
103 Art. VIII of the State Constitution of 1885, as amended, and
104 incorporated by reference in s. 6(e), Art. VIII of the State
105 Constitution, except that the license shall be issued only to
106 the person or corporation ~~that which~~ operates the hotel or motel
107 operation and not to the association of condominium owners;

108 4. A food service establishment that has 2,500 square feet
109 of service area, is equipped to serve meals to 150 persons at
110 one time, and derives at least 51 percent of its gross food and
111 beverage revenue from the sale of food and nonalcoholic
112 beverages during the first 60-day operating period and each 12-
113 month operating period thereafter. A food service establishment
114 granted a special license on or after January 1, 1958, pursuant



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115 to general or special law may not operate as a package store and
116 may not sell intoxicating beverages under such license after the
117 hours of serving or consumption of food have elapsed. Failure by
118 a licensee to meet the required percentage of food and
119 nonalcoholic beverage gross revenues during the covered
120 operating period shall result in revocation of the license or
121 denial of the pending license application. A licensee whose
122 license is revoked or an applicant whose pending application is
123 denied, or any person required to qualify on the special license
124 application, is ineligible to have any interest in a subsequent
125 application for such a license for a period of 120 days after
126 the date of the final denial or revocation;

127 5. Any caterer, deriving at least 51 percent of its gross
128 food and beverage revenue from the sale of food and nonalcoholic
129 beverages, licensed by the Division of Hotels and Restaurants
130 under chapter 509. This subparagraph does not apply to a
131 culinary education program, as defined in s. 381.0072(2), which
132 is licensed as a public food service establishment by the
133 Division of Hotels and Restaurants and provides catering
134 services. Notwithstanding any other ~~provision of~~ law to the
135 contrary, a licensee under this subparagraph shall sell or serve
136 alcoholic beverages only for consumption on the premises of a
137 catered event at which the licensee is also providing prepared
138 food, and shall prominently display its license at any catered
139 event at which the caterer is selling or serving alcoholic
140 beverages. The caterer must ensure that each catered event meets
141 the 51 percent food and nonalcoholic beverage requirement. A
142 licensee under this subparagraph shall purchase all alcoholic
143 beverages it sells or serves at a catered event from a vendor



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144 licensed under s. 563.02(1), s. 564.02(1), or licensed under s.
145 565.02(1) subject to the limitation imposed in subsection (1),
146 as appropriate. A licensee under this subparagraph may not store
147 any alcoholic beverages to be sold or served at a catered event.
148 Any alcoholic beverages purchased by a licensee under this
149 subparagraph for a catered event that are not used at that event
150 must remain with the customer; provided that if the vendor
151 accepts unopened alcoholic beverages, the licensee may return
152 such alcoholic beverages to the vendor for a credit or
153 reimbursement. Regardless of the county or counties in which the
154 licensee operates, a licensee under this subparagraph shall pay
155 the annual state license tax set forth in s. 565.02(1)(b). A
156 licensee under this subparagraph must maintain for a period of 3
157 years all records and receipts for each catered event, including
158 all contracts, customers' names, locations, dates, food
159 purchases and sales, alcoholic beverage purchases and sales,
160 nonalcoholic beverage purchases and sales, and any other records
161 required by the department by rule to demonstrate compliance
162 with the requirements of this subparagraph, ~~including licensed~~
163 ~~vendor receipts for the purchase of alcoholic beverages and~~
164 ~~records identifying each customer and the location and date of~~
165 ~~each catered event.~~ Notwithstanding any ~~provision of~~ law to the
166 contrary, any vendor licensed under s. 565.02(1) subject to the
167 limitation imposed in subsection (1), may, without any
168 additional licensure under this subparagraph, serve or sell
169 alcoholic beverages for consumption on the premises of a catered
170 event at which prepared food is provided by a caterer licensed
171 under chapter 509. If a licensee under this subparagraph also
172 possesses any other license under the Beverage Law, the license



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173 issued under this subparagraph shall not authorize the holder to
174 conduct activities on the premises to which the other license or
175 licenses apply that would otherwise be prohibited by the terms
176 of that license or the Beverage Law. Nothing in this section
177 shall permit the licensee to conduct activities that are
178 otherwise prohibited by the Beverage Law or local law. The
179 Division of Alcoholic Beverages and Tobacco is hereby authorized
180 to adopt rules to administer the license created in this
181 subparagraph, to include rules governing licensure,
182 recordkeeping, and enforcement. The first \$300,000 in fees
183 collected by the division each fiscal year pursuant to this
184 subparagraph shall be deposited in the Department of Children
185 and Families' Operations and Maintenance Trust Fund to be used
186 only for alcohol and drug abuse education, treatment, and
187 prevention programs. The remainder of the fees collected shall
188 be deposited into the Hotel and Restaurant Trust Fund created
189 pursuant to s. 509.072; or

190 6. A culinary education program as defined in s.
191 381.0072(2) which is licensed as a public food service
192 establishment by the Division of Hotels and Restaurants.

193 a. This special license shall allow the sale and
194 consumption of alcoholic beverages on the licensed premises of
195 the culinary education program. The culinary education program
196 shall specify designated areas in the facility where the
197 alcoholic beverages may be consumed at the time of application.
198 Alcoholic beverages sold for consumption on the premises may be
199 consumed only in areas designated pursuant to s. 561.01(11) and
200 may not be removed from the designated area. Such license shall
201 be applicable only in and for designated areas used by the



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202 culinary education program.

203 b. If the culinary education program provides catering
204 services, this special license shall also allow the sale and
205 consumption of alcoholic beverages on the premises of a catered
206 event at which the licensee is also providing prepared food. A
207 culinary education program that provides catering services is
208 not required to derive at least 51 percent of its gross revenue
209 from the sale of food and nonalcoholic beverages.

210 Notwithstanding any other provision of law to the contrary, a
211 licensee that provides catering services under this sub-
212 subparagraph shall prominently display its beverage license at
213 any catered event at which the caterer is selling or serving
214 alcoholic beverages. Regardless of the county or counties in
215 which the licensee operates, a licensee under this sub-
216 subparagraph shall pay the annual state license tax set forth in
217 s. 565.02(1)(b). A licensee under this sub-subparagraph must
218 maintain for a period of 3 years all records required by the
219 department by rule to demonstrate compliance with the
220 requirements of this sub-subparagraph.

221 c. If a licensee under this subparagraph also possesses any
222 other license under the Beverage Law, the license issued under
223 this subparagraph does not authorize the holder to conduct
224 activities on the premises to which the other license or
225 licenses apply that would otherwise be prohibited by the terms
226 of that license or the Beverage Law. Nothing in this
227 subparagraph shall permit the licensee to conduct activities
228 that are otherwise prohibited by the Beverage Law or local law.
229 Any culinary education program that holds a license to sell
230 alcoholic beverages shall comply with the age requirements set



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231 forth in ss. 562.11(4), 562.111(2), and 562.13.

232 d. The Division of Alcoholic Beverages and Tobacco may
233 adopt rules to administer the license created in this
234 subparagraph, to include rules governing licensure,
235 recordkeeping, and enforcement.

236 e. A license issued pursuant to this subparagraph does not
237 permit the licensee to sell alcoholic beverages by the package
238 for off-premises consumption.

239

240 However, any license heretofore issued to any such hotel, motel,
241 motor court, or restaurant or hereafter issued to any such
242 hotel, motel, or motor court, including a condominium
243 accommodation, under the general law shall not be moved to a new
244 location, such license being valid only on the premises of such
245 hotel, motel, motor court, or restaurant. Licenses issued to
246 hotels, motels, motor courts, or restaurants under the general
247 law and held by such hotels, motels, motor courts, or
248 restaurants on May 24, 1947, shall be counted in the quota
249 limitation contained in subsection (1). Any license issued for
250 any hotel, motel, or motor court under ~~the provisions of~~ this
251 law shall be issued only to the owner of the hotel, motel, or
252 motor court or, in the event the hotel, motel, or motor court is
253 leased, to the lessee of the hotel, motel, or motor court; and
254 the license shall remain in the name of the owner or lessee so
255 long as the license is in existence. Any special license now in
256 existence heretofore issued under ~~the provisions of~~ this law
257 cannot be renewed except in the name of the owner of the hotel,
258 motel, motor court, or restaurant or, in the event the hotel,
259 motel, motor court, or restaurant is leased, in the name of the



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260 lessee of the hotel, motel, motor court, or restaurant in which
261 the license is located and must remain in the name of the owner
262 or lessee so long as the license is in existence. Any license
263 issued under this section shall be marked "Special," and nothing
264 herein provided shall limit, restrict, or prevent the issuance
265 of a special license for any restaurant or motel which shall
266 hereafter meet the requirements of the law existing immediately
267 prior to the effective date of this act, if construction of such
268 restaurant has commenced prior to the effective date of this act
269 and is completed within 30 days thereafter, or if an application
270 is on file for such special license at the time this act takes
271 effect; and any such licenses issued under this proviso may be
272 annually renewed as now provided by law. Nothing herein prevents
273 an application for transfer of a license to a bona fide
274 purchaser of any hotel, motel, motor court, or restaurant by the
275 purchaser of such facility or the transfer of such license
276 pursuant to law.

277 Section 4. Subsections (1) and (3) of section 561.331,
278 Florida Statutes, are amended to read:

279 561.331 Temporary license upon application for transfer,
280 change of location, or change of type or series.-

281 (1) Upon the filing of a properly completed application for
282 transfer pursuant to s. 561.32, which application does not on
283 its face disclose any reason for denying an alcoholic beverage
284 license, by any purchaser of a business that ~~which~~ possesses a
285 beverage license of any type or series, the purchaser of such
286 business and the applicant for transfer are entitled as a matter
287 of right to receive a temporary beverage license of the same
288 type and series as that held by the seller of such business. The



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289 temporary license will be valid for all purposes under the
290 Beverage Law until the application is denied or until 14 days
291 after the application is approved. Such temporary beverage
292 license shall be issued by the district supervisor of the
293 district in which the application for transfer is made without
294 the assessment of any additional fee or tax upon the payment of
295 a fee of \$100. A purchaser operating under ~~the provisions of~~
296 this subsection is subject to the same rights, privileges,
297 duties, and limitations of a beverage licensee as are provided
298 by law, except that purchases of alcoholic beverages during the
299 term of such temporary license shall be for cash only. However,
300 such cash-only restriction does not apply if the entity holding
301 a temporary license pursuant to this section purchases alcoholic
302 beverages as part of a single-transaction cooperative purchase
303 placed by a pool buying agent or if such entity is also the
304 holder of a state beverage license authorizing the purchase of
305 the same type of alcoholic beverages as authorized under the
306 temporary license.

307 (3) Upon the filing of a properly completed application to
308 change the type or series of a beverage license by any qualified
309 licensee having a beverage license of any type or series, which
310 application does not on its face disclose any reason for denying
311 an alcoholic beverage license, the licensee is entitled as a
312 matter of right to receive a temporary beverage license of the
313 type or series applied for, which temporary license is valid for
314 all purposes under the Beverage Law until the application is
315 denied or until 14 days after the application is approved. Such
316 temporary license shall be issued by the district supervisor of
317 the district in which the application for change of type or



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318 series is made without the assessment of any additional fee or
319 tax. If the department issues a notice of intent to deny the
320 license application for failure of the applicant to disclose the
321 information required by s. 561.15(2) or (4), the temporary
322 license for transfer, change of location, or change of type of
323 series expires and shall not be extended during any proceeding
324 for administrative or judicial review pursuant to chapter 120.
325 ~~If the fee for the type or series or license applied for is~~
326 ~~greater than the fee for the license then held by the applicant,~~
327 ~~the applicant for such temporary license must pay a fee in the~~
328 ~~amount of \$100 or one fourth of the difference between the fees,~~
329 ~~whichever amount is greater. A fee is not required for an~~
330 ~~application for a temporary license of a type or series for~~
331 ~~which the fee is the same as or less than the fee for the~~
332 ~~license then held by the applicant.~~ The holder of a temporary
333 license under this subsection is subject to the same rights,
334 privileges, duties, and limitations of a beverage licensee as
335 are provided by law.

336 Section 5. Subsection (1) of section 564.01, Florida
337 Statutes, is amended to read:

338 564.01 Definitions.—

339 (1) "Wine" means all beverages made from fresh fruits,
340 berries, or grapes, either by natural fermentation or by natural
341 fermentation with brandy added, in the manner required by the
342 laws and regulations of the United States, and includes all
343 sparkling wines, champagnes, combination of the aforesaid
344 beverages, sake, vermouths, and like products. Sugar, flavors,
345 and coloring materials may be added to wine to make it conform
346 to the consumer's taste, except that the ultimate flavor or the



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347 color of the product may not be altered to imitate a beverage
348 other than wine or to change the character of the wine.

349 Section 6. Section 564.05, Florida Statutes, is repealed.

350 Section 7. Section 564.055, Florida Statutes, is amended to
351 read

352 564.055 Cider containers.—Notwithstanding any other law to
353 the contrary, cider, as defined in s. 564.06(4), may be sold by
354 vendors at retail in any size individual container containing no
355 more than 32 ounces of cider; however, this section does not
356 prohibit cider from being packaged and sold in bulk, in kegs or
357 barrels, or in any individual container that contains 1 gallon
358 or more of cider, regardless of container type. In addition,
359 cider may be packaged, filled, refilled, or sold in 32 ounce, 64
360 ounce, and 1 gallon growlers in the same manner and under the
361 same restrictions as authorized for malt beverages pursuant to
362 s. 563.06(7).

363 Section 8. Section 564.09, Florida Statutes, is amended to
364 read:

365 564.09 Restaurants; off-premises consumption of wine.—
366 Notwithstanding any other provision of law, a restaurant
367 licensed to sell wine on the premises may permit a patron to
368 remove one unsealed bottle of wine for consumption off the
369 premises if the patron has purchased a ~~full-course meal~~
370 ~~consisting of a salad or vegetable, entree, a beverage, and~~
371 ~~bread~~ and consumed a portion of the bottle of wine ~~with such~~
372 ~~meal~~ on the restaurant premises. A partially consumed bottle of
373 wine that is to be removed from the premises must be securely
374 resealed by the licensee or its employees before removal from
375 the premises. The partially consumed bottle of wine shall be



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376 placed in a bag or other container that is secured in such a
377 manner that it is visibly apparent if the container has been
378 subsequently opened or tampered with, and a dated receipt for
379 the bottle of wine and ~~full-course~~ meal shall be provided by the
380 licensee and attached to the container. If transported in a
381 motor vehicle, the container with the resealed bottle of wine
382 must be placed in a locked glove compartment, a locked trunk, or
383 the area behind the last upright seat of a motor vehicle that is
384 not equipped with a trunk.

385 Section 9. Paragraph (a) of subsection (2) of section
386 565.03, Florida Statutes, is amended to read:

387 565.03 License fees; manufacturers, distributors, brokers,
388 sales agents, and importers of alcoholic beverages; vendor
389 licenses and fees; craft distilleries.—

390 (2) (a) A distillery authorized to do business under the
391 Beverage Law shall pay an annual state license tax for each
392 plant or branch operating in the state, as follows:

393 1. If engaged in the business of manufacturing distilled
394 spirits, not including craft distilleries, a state license tax
395 of \$4,000.

396 2. If engaged in the business of manufacturing distilled
397 spirits as a craft distillery, a state license tax of \$1,000.

398 3.2- If engaged in the business of rectifying and blending
399 spirituous liquors and nothing else, a state license tax of
400 \$4,000.

401 Section 10. This act shall take effect July 1, 2017.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 400

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Regulated Industries Committee; and Senator Perry

SUBJECT: Alcoholic Beverages

DATE: April 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Betta</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 400 provides Select Exempt Service status to the following employees of the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR): chiefs, assistant chiefs, regional managers (including majors), and district or office managers (including captains).

The bill adds the Agency for Health Care Administration as one of the agencies from which an applicant for an alcoholic beverage license for consumption on premises must obtain a certificate that the applicant's place of business meets all sanitary requirements.

Existing law requires that a caterer licensed to sell beer, wine, and distilled spirits must derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. The bill provides that the percentage is based on a caterer's "gross food and nonalcoholic beverage revenue" instead of "gross revenue." A caterer must comply with the 51 percent requirement for each catered event.

Regarding a caterer's license to sell beer, wine and, distilled spirits, the bill expands the types of records that must be maintained to demonstrate compliance with its license. It requires that a caterer maintain all records and receipts for each catered event, including all contracts, customers' names, locations, dates, food purchases and sales, alcoholic beverage purchases and

sales, nonalcoholic beverage purchases and sales, and any other records required by rule of the DBPR.

The bill also:

- Repeals the fee for a temporary license issued in connection with an application to transfer an alcoholic beverage to the purchaser of a licensed business or to change the type or series of a license;
- Revises the definition of “wine” to include “sake” which is a Japanese alcoholic beverage made of fermented rice;
- Repeals the wine container limits, which under current law are limited to containers that hold no more than one gallon, unless it is in a reusable container that holds 5.16 gallons;
- Permits the sale of cider in 32 ounce, 64 ounce, or one gallon growlers in the same manner and with the same restrictions applicable to malt beverages;
- Repeals the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine, but retains the requirement that the restaurant patron purchase a meal with the bottle of wine; and
- Reduces the annual license tax for a craft distillery from \$4,000 to \$1,000.

On March 24, 2017, the Revenue Estimating Conference considered PCS/HB 689, the substantive provisions of which were similar sections 4 and 8 of CS/SB 400. The Conference estimated the bill will reduce revenues by approximately \$351,500 annually. *See* Section V.

The effective date of the bill is July 1, 2017.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The division¹ administers and enforces the Beverage Law,² which regulates the manufacture, distribution, and sale of wine, beer, and liquor. The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

State Employment

Parts I – V of ch. 110, F.S., provide the system of personnel management in the state. Part I contains general state employment provisions; part II addresses the Career Service System; part III deals with the Senior Management Service System; part IV relates to volunteers; and part V establishes the Select Exempt Service System.

The terms “career service” and “career service employee” are not defined in the statutes. A “career service employee” who has satisfactorily completed at least a one-year probationary period may only be suspended or dismissed for cause. Cause includes negligence, inefficiency or inability to perform assigned duties, insubordination, willful violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or

¹ Section 561.02, F.S. Section 561.01(6), F.S., provides that the “Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² *See* s. 561.14, F.S.

conviction of any crime.³ Career service employees are entitled a grievance process⁴ and the right to appeal a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal.⁵

Section 110.205(2), F.S., lists the personnel positions that are exempt from the career service classification, including all members, officers, and employees of the Legislature. The career service classification also does not include assistant division directors, deputy division directors, and bureau chief positions in any department, and those positions determined by a department to have managerial responsibilities comparable to those positions.⁶ Each department head may exempt a maximum of 20 policymaking or managerial positions from the Career Service System.⁷

Select Exempt Service is a separate system of personnel administration for positions that are exempt from the Career Service System and have duties and responsibilities that are managerial/policymaking, professional, or nonmanagerial/nonpolicymaking.⁸ Employees in the Select Exempt Service serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotions, transfer, or other personnel action at the discretion of the agency head.⁹

Alcoholic Beverage License Applications – Sanitation Safety Certificate

Section 561.17(2), F.S., requires that alcoholic beverage licenses for consumption on the premises include a certificate from the Division of Hotels and Restaurants of the DBPR, the Department of Agriculture and Consumer Services, the Department of Health (DOH), or the county health department that the place of business meets all of the sanitary requirements of the state.

Chapter 2010-161, L.O.F., amended the food service establishment inspection jurisdiction of the DOH to more explicitly delineate the food service establishment entities inspected by DOH, which effectively excluded hospitals and nursing homes. Hospitals and certain nursing homes are licensed under the jurisdiction of the Agency for Health Care Administration (AHCA) and, following the 2010 legislation, are subject to inspection for the storage, preparation, serving, and display of food within AHCA's licensure and inspection processes. Chapter 2010-161, L.O.F., and subsequent laws did not amend s. 561.17(2), F.S., to include the new jurisdiction of AHCA as the agency with the primary jurisdiction for certification on these requirements at nursing homes and hospitals.

³ Section 110.227(1), F.S.

⁴ Section 110.227(4), F.S.

⁵ Sections 110.227(5) and (6), F.S.,

⁶ Section 110.205(2)(m), F.S.

⁷ Section 110.205(2)(n), F.S., provides that policymaking or managerial positions are defined by the Department of Management Services and approved by the Administration Commission. Created in 14.202, F.S., the Administration Commission is part of the Executive Office of the Governor and is composed of the Governor and Cabinet.

⁸ Section 110.602, F.S.

⁹ Section 110.604, F.S.

Caterers and Food Service Establishments

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as “quota” licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes its status from a county that does not permit the sale of intoxicating liquor to one that permits such sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation.

The limitation on the number of quota licenses per county does not apply to a food service establishment that has 2,500 square feet, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages, during the first 60-day operating period and each 12-month operating period thereafter. This type of license is known as a “special restaurant license” or an “SRX license.” A food service establishment holding an SRX license issued after January 1, 1958, may not operate a package store under the license and may not sell intoxicating beverages after the hours of serving or consumption of food have elapsed. Failure by a licensee to satisfy the requirements as to the percentages of food and nonalcoholic beverages results in revocation of the special license. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation.¹⁰

The annual fee for an SRX license varies from \$624 to \$1,820, depending upon the population of the county in which the food service establishment is located.

In addition, the limitation on the number of quota licenses per county does not apply to a caterer licensed by the Division of Hotels and Restaurants under ch. 509, F.S., who derives at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages, and sells or serves beer, wine, and distilled spirits only for consumption on the premises of a catered event at which the licensee provides prepared food. Current law does not specify the period during which the 51 percent requirement applies. In contrast, the quota license exception for restaurants requires that a restaurant derive at least 51 percent of its gross food and beverage revenue from the sale of food and non-alcoholic beverages for the initial 60-day operating period and each subsequent 12-month period.¹¹

A caterer must also prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages.¹²

The annual fee is \$1,820 for a caterer’s alcoholic beverage license to sell or serve beer, wine, and distilled spirits on the premises of events at which the caterer provides prepared food.¹³

¹⁰ Section 565.02(1)(b) – (f), F.S.

¹¹ Section 561.20(2)(a)4., F.S.

¹² Section 561.20(2)(a)5., F.S.

¹³ See ss. 561.20(2)(a)5., and 565.02(1)(b), F.S.

A caterer is required to maintain for three years all records required by the rule of the DBPR to demonstrate compliance with its license requirements.

Temporary License Application Fees

An alcoholic beverages licensee may sell its licensed business and transfer its alcoholic beverages license to the purchaser of the business.¹⁴ Section 561.331(1), F.S., provides the process for license transfers. The applicant for a transfer is entitled as a matter of right to receive a temporary license of the same type and series as that held by the seller of the business if the application does not on its face disclose a reason for denying the application. The temporary license is valid until the application is denied or 14 days after the initial approval of temporary license. The fee for a temporary license transferred to the purchaser of a business is \$100.

However, before the license is transferred, the purchaser of a beer, wine, or beer and wine license must pay a transfer fee of 10 percent of the annual license tax to the division. The fee to transfer a quota license is assessed on the average annual value of gross sales of alcoholic beverages for the license in the three years immediately preceding transfer. The fee is levied at the rate of four mills (four one-thousandths of a dollar), but the transfer fee may not exceed \$5,000. An applicant may elect to pay \$5,000 in lieu of the four-mill assessment.¹⁵

An alcoholic beverage licensee may receive a temporary license upon an application to change the location of a license if the application does not on its face disclose a reason to deny the application. There is no temporary license fee to change the location of a license.¹⁶

An alcoholic beverages licensee may also apply to change the type or series of an alcoholic beverage license. The division may issue the temporary licenses if the application does not on its face disclose a reason to deny the application. These temporary licenses are valid until the application is denied or 14 days after the initial temporary license approval.¹⁷ If the fee for the new license is greater than the fee of the license held by the applicant, the temporary license fee is \$100 or one-fourth of the difference between the license fees, whichever is greater. A fee for the temporary license is not required if the license fee is the same as or less than the license fee for the license then held by the applicant.¹⁸

Wine and Cider Containers

Section 564.05, F.S., prohibits the sale of wine in an individual container that hold more than one gallon of wine. However, wine may be sold in a reusable container that holds 5.16 gallons. Distributors and manufacturers may sell wine to other distributors and manufacturers in

¹⁴ Section 561.32, F.S.

¹⁵ Section 561.331(1), F.S.

¹⁶ Section 561.331(2), F.S.

¹⁷ Section 561.331(3), F.S.

¹⁸ *Id.*

containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.¹⁹

Section 564.055, F.S., prohibits the sale of cider²⁰ at retail in any individual container that holds more than 32 ounces of cider. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container that holds one gallon or more of cider, regardless of container type.

Growlers

Malt beverages must be sold or offered for sale in containers that hold no more than 32 ounces, but malt beverages may be packaged and sold in bulk, in kegs or barrels, or in any individual container that contains one gallon or more of cider, regardless of individual container type.²¹

However, malt beverages may also be sold or offered for sale in a “growler,” which is a 32 ounce, 64 ounce, or 128 ounce malt beverage container that is filled or refilled at the point of sale. Growlers must identify or be imprinted or labeled with certain information, including the percentage of alcohol by volume, and have an unbroken seal or be incapable of being immediately consumed.²²

Wine and Sake

“Wine” means all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States. “Wine” includes all sparkling wines, champagnes, combination of these beverages, vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste. The ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.²³

A “fortified wine” is a wine containing more than 17.259 percent of alcohol by volume.²⁴

¹⁹ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is a fine not to exceed \$500.

²⁰ Section 564.06(4), F.S., provides that “cider” is “made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including but not limited to flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must, that contain not less than one-half of 1 percent of alcohol by volume and not more than 7 percent of alcohol by volume.” “Must” is the expressed juice of a fruit before and during fermentation. *See* <https://www.merriam-webster.com/dictionary/must> (last visited March 16, 2017).

²¹ Section 563.06(6), F.S.

²² Section 563.06(7), F.S.

²³ Section 564.01(1), F.S.

²⁴ Section 564.01(2), F.S.

“Sake” is a Japanese alcoholic beverage made of fermented rice.²⁵ As of February 2017, there are approximately 573 alcoholic beverage brand registrations in Florida for brand names referencing the term “sake.”²⁶

The division currently collects excise taxes on sake products pursuant to s. 564.06(1), F.S., which relates to the excise taxes on wines and beverages.²⁷ Wines, except natural sparkling wines, cider and malt beverages, containing 0.5 percent or more alcohol by volume and less than 17.259 percent alcohol by volume, are taxed at the rate of \$2.25 per gallon.²⁸ Wines, except natural sparkling wines, containing 17.259 percent or more alcohol by volume, are taxed at the rate of \$3.00 per gallon.²⁹ Natural sparkling wines are taxed at the rate of \$3.50 per gallon.³⁰

Restaurants - Off-Premises Consumption of Wine

Restaurants licensed to sell wine on the premises may permit patrons to remove one bottle of wine for consumption off the licensed premises under the following conditions:

- The patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- Before the partially-consumed bottle of wine is removed from the premises, the bottle must be securely resealed by the licensee, or the licensee’s employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- A dated receipt for the wine and meal must be attached to the container; and
- The container must be placed in a locked glove compartment, trunk, or other area behind the last upright seat of a motor vehicle that does not have a trunk.³¹

Craft Distilleries

Section 565.01, F.S., defines the terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” to mean “that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.”

A “distillery” is a manufacturer of distilled spirits,³² and a “craft distillery” is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. A distillery must notify the division in writing of its decision to qualify as a craft distillery.³³

Distilleries and craft distilleries pay the same amount of state license tax. All distilleries engaged solely in the business of manufacturing distilled spirits, or engaged in the business of blending

²⁵ See <https://www.merriam-webster.com/dictionary/sake> (last visited April 12, 2017).

²⁶ See Revenue Estimating Conference, *Sake Reference in Chapter 564, F.S., Definition of Wine*, page 501 (April 4, 2017) http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0407.pdf (last visited April 12, 2017).

²⁷ *Id.*

²⁸ Section 564.06(1), F.S.

²⁹ Section 564.06(2), F.S.

³⁰ Section 564.06(3), F.S.

³¹ Section 564.09, F.S.

³² Section 565.03(1)(c), F.S.

³³ Section 565.03(1)(b), F.S.

and rectifying³⁴ distilled spirits must pay a state license tax of \$4,000 for each plant or branch operating in Florida. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.³⁵

A craft distillery may sell to consumers branded products³⁶ distilled on the licensed premises. The products must be in factory-sealed containers filled at the distillery and sold for off-premises consumption.³⁷ The sales must occur at the distillery's souvenir gift shop located on private property contiguous to the licensed distillery premises, and included on the sketch submitted with the license application.³⁸ The craft distillery is not required to obtain, in addition to its manufacturer's license, a vendor's license in order to sell distilled spirits to consumers. Sales must be in face-to-face transactions with consumers³⁹ who are making a purchase of no more than:

- Two individual containers of each branded product;
- Three individual containers of a single branded product and up to one individual container of a second branded product; or
- Four individual containers of a single branded product.⁴⁰

There are 17 distilleries currently designated as craft distilleries, and an additional 21 licensed distilleries that produce fewer than 75,000 gallons of distilled spirits a year.⁴¹

III. Effect of Proposed Changes:

Division Personnel

Section 1 amends s. 561.11(2), F.S., dealing with the power and authority of the division, to provide Select Exempt Service status to chief, assistant chiefs, regional managers (including majors), and district or office managers (including captains). This means these positions become at-will employees. These positions are eligible for greater benefits relating to health insurance, disability, and leave.

Alcoholic Beverage License Applications – Sanitation Safety Certificate

Section 2 amends s. 561.17(2), F.S., to add the Agency for Health Care Administration as one of the agencies from which an applicant for a consumption on premises license must obtain a certificate that its place of business meets all sanitary requirements.

³⁴ Merriam-Webster defines rectify as the purification (of alcohol) especially by repeated or fractional distillation, *available at* <http://www.merriam-webster.com/dictionary/rectify> (last visited February 15, 2017).

³⁵ Section 565.03(3), F.S.

³⁶ Section 565.03(1)(a), F.S., defines “branded product” to mean “any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations.”

³⁷ Section 565.03(1)(c), F.S.

³⁸ *Id.*

³⁹ Section 565.03(1)(c)4., F.S.

⁴⁰ Section 565.03(1)(c)1., F.S.

⁴¹ See 2017 Agency Legislative Bill Analysis issued by the DBPR for CS/SB 400, dated March 31, 2017 (on file with Senate Appropriations Subcommittee on General Government) at page 11.

Caterers

Section 3 amends s. 561.20(2)(a)5., F.S., to revise the method used to calculate the percentage of food and nonalcoholic beverages sold by a caterer licensed to sell beer, wine, and distilled spirits. It provides that the percentage is based on a caterer's gross food and nonalcoholic beverages revenue. A caterer must comply with the 51 percent requirement for each catered event.

The bill expands the types of records that a caterer must maintain to demonstrate compliance with its license. A caterer must maintain all records and receipts for each catered event, including all contracts, customers' names, locations, dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by rule of the DBPR.

Temporary License Application Fees

Section 4 amends s. 561.331(1), F.S., to repeal the \$100 fee for a temporary alcoholic beverage license issued in connection with the transfer of a license to the purchaser of a licensed business. It also repeals the fees in s. 561.331(3), F.S., for a temporary license issued in connection with an application to change the type or series of a license.

Wine and Sake

Section 5 amends the definition of "wine" in s. 564.01(1), F.S., to include sake.

Wine Containers

Section 6 repeals the wine container size limits in s. 565.055, F.S.

Cider Containers

Section 7 amends s. 564.055, F.S., to permit cider to be packaged, filled, refilled, or sold in 32 ounce, 64 ounce, and one gallon growlers in the same manner and under the same restrictions authorized for malt beverages under s. 563.06(7), F.S.

Restaurants - Off-Premises Consumption of Wine

Section 8 amends s. 564.09, F.S., to repeal the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine. The bill retains the requirement that the restaurant patron purchase a meal with the bottle of wine.

Craft Distilleries

Section 9 amends s. 565.03(2)(a)1., F.S., to reduce the annual license tax for a craft distillery from \$4,000 to \$1,000 if the craft distillery is distilling and bottling all of its distilled products in containers approved for sale.

Effective Date

Section 10 provides the bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill repeals the \$100 license fee for a temporary alcoholic beverage license issued in connection with the transfer of a license to the purchaser of a licensed business. The bill also repeals the fee for a temporary license issued in connection with an application to change the type or series of license. This temporary license fee is \$100 or one-fourth of the difference between the license fees, whichever is greater, if the fee for the new license is greater than the fee for the license held by the applicant. A fee for the temporary license is not required if the license fee is the same as or less than the license fee for the license then held by the applicant.

The bill reduces the annual license tax for a craft distillery from \$4,000 to \$1,000 if the craft distillery is distilling and bottling all of its distilled products in containers approved for sale.

B. Private Sector Impact:

Fee Elimination for Temporary Licenses⁴²

Licensees will save at least \$100 or more on each temporary license in these license transactions.

In addition, licensees may see increased sales revenue due to the continued operation of businesses throughout their modification of licenses.

⁴² *Id* at page 8.

Craft Distilleries⁴³

Craft distilleries that qualify for the craft distillery designation will see a 75 percent reduction in the annual license fee for a distillery license, or a savings of \$3,000 per license each year.

C. Government Sector Impact:

Division Personnel⁴⁴

The bill provides Select Exempt Service (SES) status to specified employees of the division. The DBPR estimates that the conversion of Career Service positions to SES positions will cost between \$5,499 and \$19,800 annually, depending on how many of the 11 positions choose single health insurance coverage and how many choose family health coverage, but it believes this additional cost can be absorbed within existing resources.

	Career Service 11 FTE	Select Exempt 11 FTE	Benefit Increase
Single (low estimate)	84,854.88	90,354.00	5,499.12
Family (high estimate)	182,107.20	201,907.20	19,800.00

Additionally, there may be an occasional increase in cost for annual leave payouts at the time of separation. Any increase is anticipated by the DBPR to be minimal.⁴⁵

Temporary License Application Fees

The DBPR states that the revenue from temporary licenses issued in connection with an application for a more expensive license type or series varies by year based on individual licensee circumstances and business discretion. Temporary license fees and transfer fees were \$191,600 for Fiscal Year 2014-2015 and \$251,300 for Fiscal Year 2015-2016.⁴⁶

Current law requires that 24 percent of the license tax collected in a county for a manufacturer’s license or the vendor’s license authorized in the bill be returned to the appropriate county tax collector.⁴⁷ Thirty-eight percent of the license taxes collected within a municipality for those types of licenses are returned to the appropriate municipal officer.⁴⁸ The state receives the remaining revenue from those licenses, and that revenue is credited to the Alcoholic Beverage and Tobacco Trust Fund (AB&T TF) for the operation of the division and the DBPR.

Assuming issuance of the same number of temporary licenses as the division issued in Fiscal Year 2015-2016, the bill may reduce annual license tax revenue returned to counties and municipalities by up to \$60,312 and \$95,494, respectively, with a reduction in payments to the AB&T TF of \$95,494.

⁴³ *Id.*

⁴⁴ *Id.* at page 10.

⁴⁵ *Id.*.

⁴⁶ *Id.*

⁴⁷ Section 561.342(1), F.S.

⁴⁸ Section 561.342(2), F.S.

Wine and Sake

On April 7, 2017, the Revenue Estimating Conference determined that revising the definition of wine to include sake would have no impact on state revenue.⁴⁹

Craft Distilleries

The bill reduces the annual license tax for a craft distillery from \$4,000 to \$1,000 if the craft distillery is distilling and bottling all of its distilled products in containers approved for sale. The DBPR states that there are 17 distilleries currently designated as a craft distillery, and an additional 21-licensed distilleries that produce fewer than the 75,000 gallons of distilled spirits a year required to qualify as a craft distillery, for a total of 38 distilleries that may be affected by the fee reduction.⁵⁰ The DBPR anticipates that the fee reduction will result in an \$114,000 revenue reduction if the 21 distilleries that are currently not designated as craft distillery become designated as such.

The DBPR anticipates the reduction may cause license taxes returned to counties and municipalities to be reduced annually by up to \$27,360 and \$43,320, respectively, and the reduction in payments to the AB&T TF to be \$43,320.

Total Revenue Impact

In total, the bill will reduce net revenue to the AB&T TF by \$138,814. The bill also will result in a decrease in General Revenue of approximately \$11,105, due to the eight percent service charge for General Revenue. The bill will result in a decrease in taxes returned to counties and municipalities of approximately \$216,486.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 561.11, 561.17, 561.20, 561.331, 564.01, 564.055, and 565.03.

This bill repeals section 564.05 of the Florida Statutes.

⁴⁹See Revenue Estimating Conference, *Sake Reference in Chapter 564, F.S., Definition of Wine*, page 501 (April 4, 2017) http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0407.pdf

⁵⁰ See 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 400, dated February 15, 2017 (on file with Senate Committee on Regulated Industries) at page 10.

IX. Additional Information:

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

CS/CS by Appropriations on April 20, 2017:

The committee substitute amends the definition of “wine” in s. 564.01(1), F.S., to include sake.

CS by Regulated Industries on March 15, 2017:

The committee substitute (CS):

- Retains current law in s. 561.20(2)(a)4., F.S., which provides that the minimum square footage for a food service establishment to qualify for a special license is 2,500 square feet and the minimum equipped serving capacity is 150 persons.
- Amends s. 561.331(3), F.S., to provide that a temporary license may be issued in connection with an application to change the type or series of a license without the assessment of any additional fee or tax.
- Repeals the wine containers size limitations in s. 565.05, F.S.
- Amends s. 564.055, F.S., to permit cider to be packaged, filled, refilled, or sold in 32 ounce, 64 ounce, and one gallon growlers in the same manner and under the same restrictions authorized for malt beverages under s. 563.06(7), F.S.
- Amends s. 564.09, F.S., to repeal the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine. The CS retains the requirement that the restaurant patron must purchase a meal with the bottle of wine.

- B. **Amendments:**

None.

By the Committee on Regulated Industries; and Senator Perry

580-02479-17

2017400c1

1 A bill to be entitled
 2 An act relating to alcoholic beverages; amending s.
 3 561.11, F.S.; authorizing the Division of Alcoholic
 4 Beverages and Tobacco of the Department of Business
 5 and Professional Regulation to appoint division
 6 personnel; requiring specified personnel to have
 7 Selected Exempt Service status; amending s. 561.17,
 8 F.S.; revising the entities that may issue a
 9 certificate indicating an alcoholic beverage license
 10 applicant's place of business meets all of the
 11 sanitary requirements of the state; amending s.
 12 561.20, F.S.; revising who may be issued a special
 13 license in counties otherwise subject to limits on the
 14 number of licenses issued; revising the requirements
 15 for retaining certain business records; amending s.
 16 561.331, F.S.; requiring certain temporary beverage
 17 licenses to be issued by the district supervisor of a
 18 district without assessing additional fees or taxes;
 19 repealing s. 564.05, F.S., relating to limitations on
 20 the size of individual wine containers; amending s.
 21 564.055, F.S.; authorizing the packaging, filling,
 22 refilling, or sale, of cider in growlers amending s.
 23 564.09, F.S.; revising provisions authorizing a
 24 restaurant to allow a patron to remove a resealed wine
 25 container from a restaurant for off-premises
 26 consumption; amending s. 565.03, F.S.; specifying the
 27 state license tax for craft distilleries; providing an
 28 effective date.
 29

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30 Be It Enacted by the Legislature of the State of Florida:
 31
 32 Section 1. Subsection (2) of section 561.11, Florida
 33 Statutes, is amended to read:
 34 561.11 Power and authority of division.—
 35 (2) The division shall have full power and authority to
 36 provide for the continuous training, appointment, and upgrading
 37 of all division personnel in their respective positions with the
 38 division. Notwithstanding any other law, chiefs, assistant
 39 chiefs, regional managers, including majors, and district or
 40 office managers, including captains, shall have Selected Exempt
 41 Service status in the state personnel designation. The ~~This~~
 42 training shall include the attendance of division personnel at
 43 workshops, seminars, or special schools established by the
 44 division or other organizations when attendance at such
 45 educational programs shall in the opinion of the division be
 46 deemed appropriate to the particular position that ~~which~~ the
 47 employee holds.
 48 Section 2. Subsection (2) of section 561.17, Florida
 49 Statutes, is amended to read:
 50 561.17 License and registration applications; approved
 51 person.—
 52 (2) All applications for alcoholic beverage licenses for
 53 consumption on the premises shall be accompanied by a
 54 certificate of the Division of Hotels and Restaurants of the
 55 Department of Business and Professional Regulation or the
 56 Department of Agriculture and Consumer Services or the
 57 Department of Health or the Agency for Health Care
 58 Administration or the county health department that the place of

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59 business wherein the business is to be conducted meets all of
60 the sanitary requirements of the state.

61 Section 3. Paragraph (a) of subsection (2) of section
62 561.20, Florida Statutes, is amended to read:

63 561.20 Limitation upon number of licenses issued.—

64 (2)(a) The limitation of the number of licenses as provided
65 in this section does not prohibit the issuance of a special
66 license to:

67 1. Any bona fide hotel, motel, or motor court of not fewer
68 than 80 guest rooms in any county having a population of less
69 than 50,000 residents, and of not fewer than 100 guest rooms in
70 any county having a population of 50,000 residents or greater;
71 or any bona fide hotel or motel located in a historic structure,
72 as defined in s. 561.01(21), with fewer than 100 guest rooms
73 which derives at least 51 percent of its gross revenue from the
74 rental of hotel or motel rooms, which is licensed as a public
75 lodging establishment by the Division of Hotels and Restaurants;
76 provided, however, that a bona fide hotel or motel with no fewer
77 than 10 and no more than 25 guest rooms which is a historic
78 structure, as defined in s. 561.01(21), in a municipality that
79 on the effective date of this act has a population, according to
80 the University of Florida's Bureau of Economic and Business
81 Research Estimates of Population for 1998, of no fewer than
82 25,000 and no more than 35,000 residents and that is within a
83 constitutionally chartered county may be issued a special
84 license. This special license shall allow the sale and
85 consumption of alcoholic beverages only on the licensed premises
86 of the hotel or motel. In addition, the hotel or motel must
87 derive at least 60 percent of its gross revenue from the rental

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88 of hotel or motel rooms and the sale of food and nonalcoholic
89 beverages; provided that ~~the provisions of~~ this subparagraph
90 shall supersede local laws requiring a greater number of hotel
91 rooms;

92 2. Any condominium accommodation of which no fewer than 100
93 condominium units are wholly rentable to transients and which is
94 licensed under ~~the provisions of~~ chapter 509, except that the
95 license shall be issued only to the person or corporation which
96 operates the hotel or motel operation and not to the association
97 of condominium owners;

98 3. Any condominium accommodation of which no fewer than 50
99 condominium units are wholly rentable to transients, which is
100 located under ~~the provisions of~~ chapter 509, and which is
101 located in any county having home rule under s. 10 or s. 11,
102 Art. VIII of the State Constitution of 1885, as amended, and
103 incorporated by reference in s. 6(e), Art. VIII of the State
104 Constitution, except that the license shall be issued only to
105 the person or corporation that ~~which~~ operates the hotel or motel
106 operation and not to the association of condominium owners;

107 4. A food service establishment that has 2,500 square feet
108 of service area, is equipped to serve meals to 150 persons at
109 one time, and derives at least 51 percent of its gross food and
110 beverage revenue from the sale of food and nonalcoholic
111 beverages during the first 60-day operating period and each 12-
112 month operating period thereafter. A food service establishment
113 granted a special license on or after January 1, 1958, pursuant
114 to general or special law may not operate as a package store and
115 may not sell intoxicating beverages under such license after the
116 hours of serving or consumption of food have elapsed. Failure by

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117 a licensee to meet the required percentage of food and
 118 nonalcoholic beverage gross revenues during the covered
 119 operating period shall result in revocation of the license or
 120 denial of the pending license application. A licensee whose
 121 license is revoked or an applicant whose pending application is
 122 denied, or any person required to qualify on the special license
 123 application, is ineligible to have any interest in a subsequent
 124 application for such a license for a period of 120 days after
 125 the date of the final denial or revocation;

126 5. Any caterer, deriving at least 51 percent of its gross
 127 food and beverage revenue from the sale of food and nonalcoholic
 128 beverages, licensed by the Division of Hotels and Restaurants
 129 under chapter 509. This subparagraph does not apply to a
 130 culinary education program, as defined in s. 381.0072(2), which
 131 is licensed as a public food service establishment by the
 132 Division of Hotels and Restaurants and provides catering
 133 services. Notwithstanding any other ~~provision of~~ law to the
 134 contrary, a licensee under this subparagraph shall sell or serve
 135 alcoholic beverages only for consumption on the premises of a
 136 catered event at which the licensee is also providing prepared
 137 food, and shall prominently display its license at any catered
 138 event at which the caterer is selling or serving alcoholic
 139 beverages. The caterer must ensure that each catered event meets
 140 the 51 percent food and nonalcoholic beverage requirement. A
 141 licensee under this subparagraph shall purchase all alcoholic
 142 beverages it sells or serves at a catered event from a vendor
 143 licensed under s. 563.02(1), s. 564.02(1), or licensed under s.
 144 565.02(1) subject to the limitation imposed in subsection (1),
 145 as appropriate. A licensee under this subparagraph may not store

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146 any alcoholic beverages to be sold or served at a catered event.
 147 Any alcoholic beverages purchased by a licensee under this
 148 subparagraph for a catered event that are not used at that event
 149 must remain with the customer; provided that if the vendor
 150 accepts unopened alcoholic beverages, the licensee may return
 151 such alcoholic beverages to the vendor for a credit or
 152 reimbursement. Regardless of the county or counties in which the
 153 licensee operates, a licensee under this subparagraph shall pay
 154 the annual state license tax set forth in s. 565.02(1)(b). A
 155 licensee under this subparagraph must maintain for a period of 3
 156 years all records and receipts for each catered event, including
 157 all contracts, customers' names, locations, dates, food
 158 purchases and sales, alcoholic beverage purchases and sales,
 159 nonalcoholic beverage purchases and sales, and any other records
 160 required by the department by rule to demonstrate compliance
 161 with the requirements of this subparagraph, ~~including licensed~~
 162 ~~vendor receipts for the purchase of alcoholic beverages and~~
 163 ~~records identifying each customer and the location and date of~~
 164 ~~each catered event.~~ Notwithstanding any ~~provision of~~ law to the
 165 contrary, any vendor licensed under s. 565.02(1) subject to the
 166 limitation imposed in subsection (1), may, without any
 167 additional licensure under this subparagraph, serve or sell
 168 alcoholic beverages for consumption on the premises of a catered
 169 event at which prepared food is provided by a caterer licensed
 170 under chapter 509. If a licensee under this subparagraph also
 171 possesses any other license under the Beverage Law, the license
 172 issued under this subparagraph shall not authorize the holder to
 173 conduct activities on the premises to which the other license or
 174 licenses apply that would otherwise be prohibited by the terms

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175 of that license or the Beverage Law. Nothing in this section
 176 shall permit the licensee to conduct activities that are
 177 otherwise prohibited by the Beverage Law or local law. The
 178 Division of Alcoholic Beverages and Tobacco is hereby authorized
 179 to adopt rules to administer the license created in this
 180 subparagraph, to include rules governing licensure,
 181 recordkeeping, and enforcement. The first \$300,000 in fees
 182 collected by the division each fiscal year pursuant to this
 183 subparagraph shall be deposited in the Department of Children
 184 and Families' Operations and Maintenance Trust Fund to be used
 185 only for alcohol and drug abuse education, treatment, and
 186 prevention programs. The remainder of the fees collected shall
 187 be deposited into the Hotel and Restaurant Trust Fund created
 188 pursuant to s. 509.072; or

189 6. A culinary education program as defined in s.
 190 381.0072(2) which is licensed as a public food service
 191 establishment by the Division of Hotels and Restaurants.

192 a. This special license shall allow the sale and
 193 consumption of alcoholic beverages on the licensed premises of
 194 the culinary education program. The culinary education program
 195 shall specify designated areas in the facility where the
 196 alcoholic beverages may be consumed at the time of application.
 197 Alcoholic beverages sold for consumption on the premises may be
 198 consumed only in areas designated pursuant to s. 561.01(11) and
 199 may not be removed from the designated area. Such license shall
 200 be applicable only in and for designated areas used by the
 201 culinary education program.

202 b. If the culinary education program provides catering
 203 services, this special license shall also allow the sale and

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204 consumption of alcoholic beverages on the premises of a catered
 205 event at which the licensee is also providing prepared food. A
 206 culinary education program that provides catering services is
 207 not required to derive at least 51 percent of its gross revenue
 208 from the sale of food and nonalcoholic beverages.
 209 Notwithstanding any other provision of law to the contrary, a
 210 licensee that provides catering services under this sub-
 211 subparagraph shall prominently display its beverage license at
 212 any catered event at which the caterer is selling or serving
 213 alcoholic beverages. Regardless of the county or counties in
 214 which the licensee operates, a licensee under this sub-
 215 subparagraph shall pay the annual state license tax set forth in
 216 s. 565.02(1)(b). A licensee under this sub-subparagraph must
 217 maintain for a period of 3 years all records required by the
 218 department by rule to demonstrate compliance with the
 219 requirements of this sub-subparagraph.

220 c. If a licensee under this subparagraph also possesses any
 221 other license under the Beverage Law, the license issued under
 222 this subparagraph does not authorize the holder to conduct
 223 activities on the premises to which the other license or
 224 licenses apply that would otherwise be prohibited by the terms
 225 of that license or the Beverage Law. Nothing in this
 226 subparagraph shall permit the licensee to conduct activities
 227 that are otherwise prohibited by the Beverage Law or local law.
 228 Any culinary education program that holds a license to sell
 229 alcoholic beverages shall comply with the age requirements set
 230 forth in ss. 562.11(4), 562.111(2), and 562.13.

231 d. The Division of Alcoholic Beverages and Tobacco may
 232 adopt rules to administer the license created in this

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233 subparagraph, to include rules governing licensure,
234 recordkeeping, and enforcement.

235 e. A license issued pursuant to this subparagraph does not
236 permit the licensee to sell alcoholic beverages by the package
237 for off-premises consumption.

238
239 However, any license heretofore issued to any such hotel, motel,
240 motor court, or restaurant or hereafter issued to any such
241 hotel, motel, or motor court, including a condominium
242 accommodation, under the general law shall not be moved to a new
243 location, such license being valid only on the premises of such
244 hotel, motel, motor court, or restaurant. Licenses issued to
245 hotels, motels, motor courts, or restaurants under the general
246 law and held by such hotels, motels, motor courts, or
247 restaurants on May 24, 1947, shall be counted in the quota
248 limitation contained in subsection (1). Any license issued for
249 any hotel, motel, or motor court under ~~the provisions of~~ this
250 law shall be issued only to the owner of the hotel, motel, or
251 motor court or, in the event the hotel, motel, or motor court is
252 leased, to the lessee of the hotel, motel, or motor court; and
253 the license shall remain in the name of the owner or lessee so
254 long as the license is in existence. Any special license now in
255 existence heretofore issued under ~~the provisions of~~ this law
256 cannot be renewed except in the name of the owner of the hotel,
257 motel, motor court, or restaurant or, in the event the hotel,
258 motel, motor court, or restaurant is leased, in the name of the
259 lessee of the hotel, motel, motor court, or restaurant in which
260 the license is located and must remain in the name of the owner
261 or lessee so long as the license is in existence. Any license

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262 issued under this section shall be marked "Special," and nothing
263 herein provided shall limit, restrict, or prevent the issuance
264 of a special license for any restaurant or motel which shall
265 hereafter meet the requirements of the law existing immediately
266 prior to the effective date of this act, if construction of such
267 restaurant has commenced prior to the effective date of this act
268 and is completed within 30 days thereafter, or if an application
269 is on file for such special license at the time this act takes
270 effect; and any such licenses issued under this proviso may be
271 annually renewed as now provided by law. Nothing herein prevents
272 an application for transfer of a license to a bona fide
273 purchaser of any hotel, motel, motor court, or restaurant by the
274 purchaser of such facility or the transfer of such license
275 pursuant to law.

276 Section 4. Subsections (1) and (3) of section 561.331,
277 Florida Statutes, are amended to read:

278 561.331 Temporary license upon application for transfer,
279 change of location, or change of type or series.—

280 (1) Upon the filing of a properly completed application for
281 transfer pursuant to s. 561.32, which application does not on
282 its face disclose any reason for denying an alcoholic beverage
283 license, by any purchaser of a business that which possesses a
284 beverage license of any type or series, the purchaser of such
285 business and the applicant for transfer are entitled as a matter
286 of right to receive a temporary beverage license of the same
287 type and series as that held by the seller of such business. The
288 temporary license will be valid for all purposes under the
289 Beverage Law until the application is denied or until 14 days
290 after the application is approved. Such temporary beverage

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291 license shall be issued by the district supervisor of the
 292 district in which the application for transfer is made without
 293 the assessment of any additional fee or tax upon the payment of
 294 a fee of \$100. A purchaser operating under ~~the provisions of~~
 295 this subsection is subject to the same rights, privileges,
 296 duties, and limitations of a beverage licensee as are provided
 297 by law, except that purchases of alcoholic beverages during the
 298 term of such temporary license shall be for cash only. However,
 299 such cash-only restriction does not apply if the entity holding
 300 a temporary license pursuant to this section purchases alcoholic
 301 beverages as part of a single-transaction cooperative purchase
 302 placed by a pool buying agent or if such entity is also the
 303 holder of a state beverage license authorizing the purchase of
 304 the same type of alcoholic beverages as authorized under the
 305 temporary license.

306 (3) Upon the filing of a properly completed application to
 307 change the type or series of a beverage license by any qualified
 308 licensee having a beverage license of any type or series, which
 309 application does not on its face disclose any reason for denying
 310 an alcoholic beverage license, the licensee is entitled as a
 311 matter of right to receive a temporary beverage license of the
 312 type or series applied for, which temporary license is valid for
 313 all purposes under the Beverage Law until the application is
 314 denied or until 14 days after the application is approved. Such
 315 temporary license shall be issued by the district supervisor of
 316 the district in which the application for change of type or
 317 series is made without the assessment of any additional fee or
 318 tax. If the department issues a notice of intent to deny the
 319 license application for failure of the applicant to disclose the

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320 information required by s. 561.15(2) or (4), the temporary
 321 license for transfer, change of location, or change of type of
 322 series expires and shall not be extended during any proceeding
 323 for administrative or judicial review pursuant to chapter 120.
 324 ~~If the fee for the type or series or license applied for is~~
 325 ~~greater than the fee for the license then held by the applicant,~~
 326 ~~the applicant for such temporary license must pay a fee in the~~
 327 ~~amount of \$100 or one-fourth of the difference between the fees,~~
 328 ~~whichever amount is greater. A fee is not required for an~~
 329 ~~application for a temporary license of a type or series for~~
 330 ~~which the fee is the same as or less than the fee for the~~
 331 ~~license then held by the applicant.~~ The holder of a temporary
 332 license under this subsection is subject to the same rights,
 333 privileges, duties, and limitations of a beverage licensee as
 334 are provided by law.

335 Section 5. Section 564.05, Florida Statutes, is repealed.

336 Section 6. Section 564.055, Florida Statutes, is amended to
 337 read

338 564.055 Cider containers.—Notwithstanding any other law to
 339 the contrary, cider, as defined in s. 564.06(4), may be sold by
 340 vendors at retail in any size individual container containing no
 341 more than 32 ounces of cider; however, this section does not
 342 prohibit cider from being packaged and sold in bulk, in kegs or
 343 barrels, or in any individual container that contains 1 gallon
 344 or more of cider, regardless of container type. In addition,
 345 cider may be packaged, filled, refilled, or sold in 32 ounce, 64
 346 ounce, and 1 gallon growlers in the same manner and under the
 347 same restrictions as authorized for malt beverages pursuant to
 348 s. 563.06(7).

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349 Section 7. Section 564.09, Florida Statutes, is amended to
350 read:

351 564.09 Restaurants; off-premises consumption of wine.-
352 Notwithstanding any other provision of law, a restaurant
353 licensed to sell wine on the premises may permit a patron to
354 remove one unsealed bottle of wine for consumption off the
355 premises if the patron has purchased a ~~full-course~~ meal
356 ~~consisting of a salad or vegetable, entree, a beverage, and~~
357 ~~bread~~ and consumed a portion of the bottle of wine ~~with such~~
358 ~~meal~~ on the restaurant premises. A partially consumed bottle of
359 wine that is to be removed from the premises must be securely
360 resealed by the licensee or its employees before removal from
361 the premises. The partially consumed bottle of wine shall be
362 placed in a bag or other container that is secured in such a
363 manner that it is visibly apparent if the container has been
364 subsequently opened or tampered with, and a dated receipt for
365 the bottle of wine and ~~full-course~~ meal shall be provided by the
366 licensee and attached to the container. If transported in a
367 motor vehicle, the container with the resealed bottle of wine
368 must be placed in a locked glove compartment, a locked trunk, or
369 the area behind the last upright seat of a motor vehicle that is
370 not equipped with a trunk.

371 Section 8. Paragraph (a) of subsection (2) of section
372 565.03, Florida Statutes, is amended to read:

373 565.03 License fees; manufacturers, distributors, brokers,
374 sales agents, and importers of alcoholic beverages; vendor
375 licenses and fees; craft distilleries.-

376 (2) (a) A distillery authorized to do business under the
377 Beverage Law shall pay an annual state license tax for each

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378 plant or branch operating in the state, as follows:

379 1. If engaged in the business of manufacturing distilled
380 spirits, not including craft distilleries, a state license tax
381 of \$4,000.

382 2. If engaged in the business of manufacturing distilled
383 spirits as a craft distillery, a state license tax of \$1,000.

384 ~~3.2-~~ If engaged in the business of rectifying and blending
385 spirituous liquors and nothing else, a state license tax of
386 \$4,000.

387 Section 9. This act shall take effect July 1, 2017.

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The Florida Senate

Committee Agenda Request

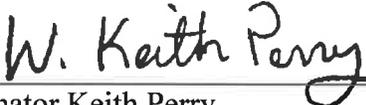
To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 15, 2017

I respectfully request that **Senate Bill #400**, relating to Alcoholic Beverages, be placed on the:

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



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)

20 APR 17

Meeting Date

SB 400

Bill Number (if applicable)

Topic ALCOHOLIC BEVERAGES

Amendment Barcode (if applicable)

Name RICHARD TURNER

Job Title GEN COUNSEL : V.P. GOVERNMENTAL RELATIONS

Address 230 S. ADAMS ST
Street

Phone 850. 224. 2250

TALLAHASSEE FL 32301
City State Zip

Email r.turner@fr19.org

Speaking: For Against Information

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

Representing FLORIDA RESTAURANTS : LODGING ASSN

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)

April 20, 2017
Meeting Date

400
Bill Number (if applicable)

Topic Alcoholic Beverages

Amendment Barcode (if applicable)

Name Josh Aubuchon

Job Title General Counsel

Address 315 S. Calhoun St.
Street

Phone 224-7000

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 Brewers Guild

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)

04/20/17
Meeting Date

400
Bill Number (if applicable)

Topic SB 400

Amendment Barcode (if applicable)

Name Andrew Forst

Job Title Legislative Coordinator

Address 2601 Blairstone Rd

Phone 850-487-4827

Tallahassee FL 32399
City State Zip

Email LegislativeAffairs@myFloridaLicense.com

Speaking: For Against Information

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

Representing DBPR

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 Appropriations

BILL: CS/CS/SB 430

INTRODUCER: Appropriations Committee; Banking and Insurance Committee; and Senators Bean and Flores

SUBJECT: Discount Plan Organizations

DATE: April 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders/Forbes</u>	<u>Williams</u>	<u>AHS</u>	<u>Recommend: Favorable</u>
3.	<u>Sanders/Forbes</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 430 amends Part II of chapter 636, Florida Statutes, relating to Discount Medical Plan Organization. The bill:

- Changes the term “discount medical plan” to “discount plan,” changes the title of Part II of chapter 636, Florida Statutes, from “discount medical plan organizations” to “discount plan organizations, and also changes the terms and allows old terms to be used until June 30, 2018;
- Exempts from licensure requirements those plans that do not charge a fee to plan members;
- Adds a five year retention of member records requirement and subjects such records to inspection by the Office of Insurance Regulation (OIR) at any time;
- Requires a member to receive a reimbursement of charges if the member cancels a plan in compliance with the rules of an open enrollment period or at any time within 30 days of written notice;
- Allows for an alternate method of providing disclosures and provides disclosure requirements when initial contact is made electronically or by telephone;
- Removes requirements that all discount plan charges must be submitted to the OIR, and that charges greater than \$30 per month and \$360 per year may only be charged if approved by OIR;
- Removes a standard that charges bear a reasonable relation to the benefits received;
- Removes the requirement that forms must be submitted to the OIR for approval;

- Allows a discount plan organization to delegate functions to its marketers;
- Allows a marketer or discount plan organization to commingle medical services and other services on a single page of forms, advertisements, marketing materials or brochures; and
- Removes the requirement that the fees for the discount medical plan must be provided in writing to the member when a marketer or discount plan organization sells a discount medical plan together with any other product and the fees exceed \$30.

The OIR has not identified any fiscal impact on state revenues or expenditures.

The bill is effective upon becoming a law.

II. Present Situation:

Discount medical plans are agreements where membership fees are charged in exchange for the right of the member to receive discounts on certain medical services. Such plans are regulated under Part II of ch. 636, F.S., and are not considered insurance. A medical provider who provides discount medical services to his or her own patients is exempt, regardless if a fee is charged.

Under Part II, all forms used must first be filed and approved by the OIR. Any amendments to a previously approved form constitute a new form that is subject to OIR approval. Disclosures are required to be made on the first page of advertisements, marketing materials, or brochures. When the initial contract with a prospective member is by telephone, the disclosures are required to be made orally and provided in the initial written materials that describe the benefits under the plan provided to the prospective or new member.

All charges to members are required to be filed with the Office of Insurance Regulation (OIR), any charges greater than \$30 per month or \$360 per year must be approved by the OIR before the charges can be used. Plan members are guaranteed a refund of periodic charges if cancellation occurs within the first 30 days after the effective date of enrollment. An annual report is required to be filed with the OIR within three months after the end of each organization's fiscal year. Each discount medical plan organization is required to maintain a net worth of at least \$150,000 to become or remain eligible for licensure.

III. Effect of Proposed Changes:

This bill substantially revises Part II of ch. 636, F.S., governing discount medical plans.

Sections 1 and 2 make conforming changes relating to the revised terms in section 3, revising the title to ch. 636, F.S., and the title to Part II of ch. 636, F.S.

Section 3 amends s. 636.202, F.S. to change the terms "discount medical plan" to "discount plan" and "discount medical plan organization" to "discount plan organization" within ch. 636, F.S. The old terms will continue to be used until June 30, 2018, allowing time to transition to the new terminology. Furthermore, discount plans that do not charge a fee will be exempt from Part II of ch. 636, F.S. Each section of the bill incorporates the new terms.

Section 4 amends s. 636.204, F.S., to authorize providers who provide their patients discounts without a third party to remain exempt from Part II of ch. 636, F.S.

Section 5 amends s. 636.206, F.S., to require a discount plan organization to maintain member records for the duration of the agreement and five years thereafter, subject to inspection by the OIR at any time. Records required to be retained include an accurate record of each member, the membership materials provided to each member, the discount plan issued to the members, and the charges billed and paid by the members.

Section 6 amends s. 636.208, F.S., to revise the circumstances under which a member can receive reimbursement for canceling a discount plan. Currently, a member may cancel a discount medical plan within the first 30 days of enrollment, and upon returning the discount card, must be reimbursed all periodic charges. The bill requires the reimbursement if the cancellation is consistent with the open enrollment rules established for such plans and also allows for cancelation in writing at any time within 30 days of notice by the member.

Section 7 amends s. 636.212, F.S., to establish disclosure requirements for written materials, online materials and solicitations over the phone. For written materials, the disclosures must be printed in 12-point font on all advertisements, marketing materials, or brochures relating to the discount plan. For online materials, the disclosures must be printed in a readable size and font on all advertisements, marketing materials, or brochures relating to the discount plan. For telephone solicitations, the disclosure must be given over the phone and must also be sent in writing with any membership or signup materials.

Section 8 amends s. 636.214, F.S., to clarify that an agreement between a discount plan organization and a provider must contain a statement that the provider will not charge members more than the discounted rate.

Section 9 amends s. 636.216, F.S., to remove the requirements that all charges for a discount plan be submitted to the OIR and that charges above \$30 per month or \$360 per year be approved by the OIR. Also, section 9 removes the requirement that the OIR approve all forms and advertisements. Additionally, this section removes a requirement that a discount plan organization has the burden of proof that the charges bear a reasonable relation to the benefits received by a member.

Section 10 amends s. 636.228, F.S., to allow a discount plan organization to delegate functions to a marketer, but binds the organization for any acts of its marketers within the scope of the delegation.

Sections 11 amends s. 636.230, F.S. to allow a marketer or discount plan organization to commingle medical services and other services on a single page of forms, advertisements, marketing materials, or brochures. This section also deletes the requirement that the fees for the discount medical plan must be provided in writing to the member if the discount medical plan is bundled together with any other product and the fees exceed \$30.

Sections 12 amends s. 636.232, F.S., to make a technical change conforming to a change in section 9 and removes the OIR's need to develop rules for form regulation and approval.

Sections 13 through 30 amends ss. 408.9091, 408.910, 627.64731, 636.003, 636.205, 636.207, 636.210, 636.218, 636.220, 636.222, 636.223, 636.224, 636.226, 636.234, 636.236, 636.238, 636.240, and 636.244, F.S., respectively, to make conforming changes relating to the revised terms in section 3.

Section 31 provides the effective date of the bill as becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Providers currently exempt from licensure but subject to licensure under this bill will be required to pay new fees associated with such licensure.

B. Private Sector Impact:

Providers who are currently exempt from licensure would incur administrative costs of licensing.

C. Government Sector Impact:

The Office of Insurance Regulation has not identified any impact on state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 636.202, 636.204, 636.208, 636.212, 636.214, 636.216, 636.228, 636.230, 408.9091, 408.910, 627.64731, 636.003, 636.205, 636.206, 636.207, 636.210, 636.218, 636.220, 636.222, 636.223, 636.224, 636.226, 636.232, 636.234, 636.236, 636.238, 636.240, and 636.244

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS/CS by Appropriations on April 20, 2017:

The committee substitute deletes language from the bill that requires a third party entity that contracts with a provider to administer a discount plan to be licensed as a discount plan organization.

CS by Banking and Insurance on March 6, 2017:

The CS clarifies that when a provider pays a third party vendor to provide discounts to their own patients, the third party vendor must be licensed as a discount plan organization. Discount plan organizations must maintain records for five years and such records are subject to examination by the OIR at any time. The CS allows discount plan cancelations outside of an open enrollment plan to occur at any time within 30 days' of written notice. The CS also clarifies how disclosures must be given depending on the type of solicitation.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 187 - 190
and insert:
plan organization.

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

And the title is amended as follows:

Delete lines 6 - 9
and insert:



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11

provisions to changes made by the act; amending

By the Committee on Banking and Insurance; and Senators Bean and Flores

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1 A bill to be entitled
 2 An act relating to discount plan organizations;
 3 revising the titles of ch. 636, F.S., and part II of
 4 ch. 636, F.S.; amending s. 636.202, F.S.; revising
 5 definitions; amending s. 636.204, F.S.; conforming
 6 provisions to changes made by the act; requiring
 7 third-party entities that contract with providers to
 8 administer or provide platforms for discount plans to
 9 be licensed as discount plan organizations; amending
 10 s. 636.206, F.S.; conforming provisions to changes
 11 made by the act; requiring discount plan organizations
 12 to maintain, for a specified timeframe, certain
 13 records in a form accessible to the Office of
 14 Insurance Regulation during an examination or
 15 investigation; amending s. 636.208, F.S.; conforming
 16 provisions to changes made by the act; specifying
 17 periodic charge reimbursement and other requirements
 18 for discount plan organizations following membership
 19 cancellation requests; amending s. 636.212, F.S.;
 20 requiring discount plan organizations and marketers to
 21 provide specified disclosures to prospective members
 22 before enrollment; authorizing discount plan
 23 organizations and marketers to make other disclosures;
 24 requiring prospective members to acknowledge
 25 acceptance of disclosures before enrollment;
 26 specifying requirements for disclosures made in
 27 writing or by electronic means; revising requirements
 28 for disclosures made by telephone; amending s.
 29 636.214, F.S.; making a technical change; conforming

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30 provisions to changes made by the act; amending s.
 31 636.216, F.S.; deleting provisions relating to charge
 32 and form filings; conforming a provision to changes
 33 made by the act; amending s. 636.228, F.S.; conforming
 34 provisions to changes made by the act; authorizing a
 35 discount plan organization to delegate functions to
 36 its marketers; providing that the discount plan
 37 organization is bound by acts of its marketers within
 38 the scope of the delegation; amending s. 636.230,
 39 F.S.; conforming provisions to changes made by the
 40 act; authorizing a marketer or discount plan
 41 organization to commingle certain products on a single
 42 page of certain documents; deleting a requirement for
 43 discount medical plan fees to be provided in writing
 44 under certain circumstances; amending s. 636.232,
 45 F.S.; conforming a provision to changes made by the
 46 act; deleting rulemaking authority of the Financial
 47 Services Commission as to the establishment of certain
 48 standards; amending ss. 408.9091, 408.910, 627.64731,
 49 636.003, 636.205, 636.207, 636.210, 636.218, 636.220,
 50 636.222, 636.223, 636.224, 636.226, 636.234, 636.236,
 51 636.238, 636.240, and 636.244, F.S.; conforming
 52 provisions to changes made by the act; providing an
 53 effective date.

54
 55 Be It Enacted by the Legislature of the State of Florida:

56
 57 Section 1. Chapter 636, Florida Statutes, entitled "Prepaid
 58 Limited Health Service Organizations and Discount Medical Plan

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59 Organizations," is retitled "Prepaid Limited Health Service
60 Organizations and Discount Plan Organizations."

61 Section 2. Part II of chapter 636, Florida Statutes,
62 entitled "Discount Medical Plan Organizations," is retitled
63 "Discount Plan Organizations."

64 Section 3. Section 636.202, Florida Statutes, is amended to
65 read:

66 636.202 Definitions.—As used in this part, the term:

67 (1) "Discount ~~medical~~ plan" means a business arrangement or
68 contract in which a person, in exchange for fees, dues, charges,
69 or other consideration, provides access for plan members to
70 providers of medical services and the right to receive medical
71 services from those providers at a discount. The term "~~discount~~
72 ~~medical plan~~" does not include any product regulated under
73 chapter 627, chapter 641, or part I of this chapter; ~~or~~ any
74 medical services provided through a telecommunications medium
75 that does not offer a discount to the plan member for those
76 medical services; or any plan that does not charge a fee to plan
77 members. Until June 30, 2018, a discount plan may also be
78 referred to as a discount medical plan.

79 (2) "Discount ~~medical~~ plan organization" means an entity
80 that which, in exchange for fees, dues, charges, or other
81 consideration, provides access for plan members to providers of
82 medical services and the right to receive medical services from
83 those providers at a discount. Until June 30, 2018, a discount
84 plan organization may also be referred to as a discount medical
85 plan organization.

86 (3) "Marketer" means a person or entity that which markets,
87 promotes, sells, or distributes a discount ~~medical~~ plan,

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88 including a private label entity that which places its name on
89 and markets or distributes a discount ~~medical~~ plan but does not
90 operate a discount ~~medical~~ plan.

91 (4) "Medical services" means any care, service, or
92 treatment of illness or dysfunction of, or injury to, the human
93 body, including, but not limited to, physician care, inpatient
94 care, hospital surgical services, emergency services, ambulance
95 services, dental care services, vision care services, mental
96 health services, substance abuse services, chiropractic
97 services, podiatric care services, laboratory services, and
98 medical equipment and supplies. The term does not include
99 pharmaceutical supplies or prescriptions.

100 (5) "Member" means any person who pays fees, dues, charges,
101 or other consideration for the right to receive the purported
102 benefits of a discount ~~medical~~ plan.

103 (6) "Provider" means any person or institution that which
104 is contracted, directly or indirectly, with a discount ~~medical~~
105 plan organization to provide medical services to members.

106 (7) "Provider network" means an entity that which
107 negotiates on behalf of more than one provider with a discount
108 ~~medical~~ plan organization to provide medical services to
109 members.

110 Section 4. Subsections (1), (2), (4), and (6) of section
111 636.204, Florida Statutes, are amended to read:

112 636.204 License required.—

113 (1) Before doing business in this state as a discount
114 ~~medical~~ plan organization, an entity must be a corporation, a
115 limited liability company, or a limited partnership,
116 incorporated, organized, formed, or registered under the laws of

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117 this state or authorized to transact business in this state in
 118 accordance with chapter 605, part I of chapter 607, chapter 617,
 119 chapter 620, or chapter 865, and must be licensed by the office
 120 as a discount ~~medical~~ plan organization or be licensed by the
 121 office pursuant to chapter 624, part I of this chapter, or
 122 chapter 641.

123 (2) An application for a license to operate as a discount
 124 ~~medical~~ plan organization must be filed with the office on a
 125 form prescribed by the commission. Such application must be
 126 sworn to by an officer or authorized representative of the
 127 applicant and be accompanied by the following, if applicable:

128 (a) A copy of the applicant's articles of incorporation or
 129 other organizing documents, including all amendments.

130 (b) A copy of the applicant's bylaws.

131 (c) A list of the names, addresses, official positions, and
 132 biographical information of the individuals who are responsible
 133 for conducting the applicant's affairs, including, but not
 134 limited to, all members of the board of directors, board of
 135 trustees, executive committee, or other governing board or
 136 committee, the officers, contracted management company
 137 personnel, and any person or entity owning or having the right
 138 to acquire 10 percent or more of the voting securities of the
 139 applicant. Such listing must fully disclose the extent and
 140 nature of any contracts or arrangements between any individual
 141 who is responsible for conducting the applicant's affairs and
 142 the discount ~~medical~~ plan organization, including any possible
 143 conflicts of interest.

144 (d) A complete biographical statement, ~~7~~ on forms prescribed
 145 by the commission, an independent investigation report, and a

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146 set of fingerprints, as provided in chapter 624, with respect to
 147 each individual identified under paragraph (c).

148 (e) A statement generally describing the applicant, its
 149 facilities and personnel, and the medical services to be
 150 offered.

151 (f) A copy of the form of all contracts made or to be made
 152 between the applicant and any providers or provider networks
 153 regarding the provision of medical services to members.

154 (g) A copy of the form of any contract made or arrangement
 155 to be made between the applicant and any person listed in
 156 paragraph (c).

157 (h) A copy of the form of any contract made or to be made
 158 between the applicant and any person, corporation, partnership,
 159 or other entity for the performance on the applicant's behalf of
 160 any function, including, but not limited to, marketing,
 161 administration, enrollment, investment management, and
 162 subcontracting for the provision of health services to members.

163 (i) A copy of the applicant's most recent financial
 164 statements audited by an independent certified public
 165 accountant. An applicant that is a subsidiary of a parent entity
 166 that is publicly traded and that prepares audited financial
 167 statements reflecting the consolidated operations of the parent
 168 entity and the subsidiary may petition the office to accept, in
 169 lieu of the audited financial statement of the applicant, the
 170 audited financial statement of the parent entity and a written
 171 guaranty by the parent entity that the minimum capital
 172 requirements of the applicant required by this part will be met
 173 by the parent entity.

174 (j) A description of the proposed method of marketing.

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175 (k) A description of the subscriber complaint procedures to
176 be established and maintained.

177 (l) The fee for issuance of a license.

178 (m) Such other information as the commission or office may
179 reasonably require to make the determinations required by this
180 part.

181 (4) ~~Before~~ ~~Prior to~~ licensure by the office, each discount
182 ~~medical~~ plan organization must establish an Internet website so
183 as to conform to the requirements of s. 636.226.

184 (6) This part does not require ~~Nothing in this part~~
185 ~~requires~~ a provider who provides discounts to his or her own
186 patients to obtain and maintain a license as a discount ~~medical~~
187 plan organization. If a provider contracts with a third-party
188 entity to administer or provide a platform for a discount plan,
189 the third-party entity must be licensed as a discount plan
190 organization.

191 Section 5. Section 636.206, Florida Statutes, is amended to
192 read:

193 636.206 Examinations and investigations.—

194 (1) The office may examine or investigate the business and
195 affairs of any discount ~~medical~~ plan organization. The office
196 may order any discount ~~medical~~ plan organization or applicant to
197 produce any records, books, files, advertising and solicitation
198 materials, or other information and may take statements under
199 oath to determine whether the discount ~~medical~~ plan organization
200 or applicant is in violation of the law or is acting contrary to
201 the public interest. The expenses incurred in conducting any
202 examination or investigation must be paid by the discount
203 ~~medical~~ plan organization or applicant. Examinations and

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204 investigations must be conducted as provided in chapter 624. For
205 the duration of the agreement and for 5 years thereafter, every
206 discount plan organization shall maintain, in a form accessible
207 to the office during an examination or investigation, an
208 accurate record of each member, the membership materials
209 provided to the member, the discount plan issued to the member,
210 and the charges billed and paid by the member.

211 (2) Failure by the discount ~~medical~~ plan organization to
212 pay the expenses incurred under subsection (1) is grounds for
213 denial or revocation.

214 Section 6. Section 636.208, Florida Statutes, is amended to
215 read:

216 636.208 Fees; charges; reimbursement.—

217 (1) A discount ~~medical~~ plan organization may charge a
218 periodic charge as well as a reasonable one-time processing fee
219 for a discount ~~medical~~ plan.

220 (2) (a) If the member cancels his or her membership in the
221 discount ~~medical~~ plan organization within the first 30 days
222 after the effective date of enrollment in the plan, the member
223 shall receive a reimbursement of all periodic charges upon
224 return of the discount card to the discount ~~medical~~ plan
225 organization.

226 (b) If the member cancels his or her membership in the
227 discount plan organization consistent with the open enrollment
228 rules established by an employer or association for a plan
229 having an open enrollment period, the member shall receive a pro
230 rata reimbursement of all periodic charges upon return of the
231 discount card to the discount plan organization.

232 (c) Except for plans enrolled under paragraph (b), if the

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233 member requests in writing the cancellation of his or her
 234 membership in the discount plan organization after the first 30
 235 days allowed in paragraph (a), the discount plan organization:
 236 1. Must make the cancellation effective no later than 30
 237 days after receiving the member's cancellation request;
 238 2. May not make future charges to the member after the
 239 cancellation has taken effect; and
 240 3. Must provide the member a pro rata reimbursement of
 241 periodic charges for all months after the effective date of the
 242 cancellation.

243 (3) If the discount ~~medical~~ plan organization cancels a
 244 membership for any reason other than nonpayment of fees by the
 245 member, the discount ~~medical~~ plan organization ~~must~~ shall make a
 246 pro rata reimbursement of all periodic charges to the member.

247 (4) In addition to the reimbursement of periodic charges
 248 for the reasons stated in subsections (2) and (3), a discount
 249 ~~medical~~ plan organization shall also reimburse the member for
 250 any portion of a one-time processing fee that exceeds \$30 per
 251 year.

252 Section 7. Section 636.212, Florida Statutes, is amended to
 253 read:

254 636.212 Disclosures.—A discount plan organization or
 255 marketer shall provide disclosures to a prospective member
 256 before his or her enrollment. A discount plan organization or
 257 marketer may make disclosures in addition to those described in
 258 this part. Before enrollment, a prospective member must
 259 acknowledge he or she has accepted the disclosures ~~The following~~
 260 ~~disclosures must be made in writing to any prospective member~~
 261 ~~and must be on the first page of any advertisements, marketing~~

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262 ~~materials, or brochures relating to a discount medical plan. The~~
 263 ~~disclosures must be printed in not less than 12-point type.~~
 264 (1) The disclosures must include:
 265 (a) That the plan is not insurance.
 266 (b) ~~(2)~~ That the plan provides discounts at certain health
 267 care providers for medical services.
 268 (c) ~~(3)~~ That the plan does not make payments directly to the
 269 providers of medical services.
 270 (d) ~~(4)~~ That the plan member is obligated to pay for all
 271 health care services but will receive a discount from those
 272 health care providers who have contracted with the discount plan
 273 organization.
 274 (e) ~~(5)~~ The name and address of the licensed discount
 275 medical plan organization.

276 (2) Written disclosures must include the disclosures in
 277 subsection (1) on the first page of any advertisement, marketing
 278 material, or brochure relating to a discount plan. The first
 279 page is the page that first includes the information describing
 280 benefits. The disclosures must be printed in not less than 12-
 281 point type.

282 (3) Disclosures provided by electronic means must include
 283 the disclosures in subsection (1) on any advertisement,
 284 marketing material, or brochure relating to a discount plan. The
 285 disclosures must be viewable in a readable font size and color.

286 (4) Disclosures made by telephone must include the
 287 disclosures in subsection (1), and a written disclosure in
 288 accordance with subsection (2) must also be provided with the
 289 initial materials sent to the prospective or new member.
 290

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291 ~~If the initial contract is made by telephone, the disclosures~~
 292 ~~required by this section shall be made orally and provided in~~
 293 ~~the initial written materials that describe the benefits under~~
 294 ~~the discount medical plan provided to the prospective or new~~
 295 ~~member.~~

296 Section 8. Section 636.214, Florida Statutes, is amended to
 297 read:

298 636.214 Provider agreements.—

299 (1) All providers offering medical services to members
 300 under a discount ~~medical~~ plan must provide such services
 301 pursuant to a written agreement. The agreement may be entered
 302 into directly by the provider or by a provider network to which
 303 the provider belongs.

304 (2) A provider agreement between a discount ~~medical~~ plan
 305 organization and a provider must provide the following:

306 (a) A list of the services and products to be provided at a
 307 discount.

308 (b) The amount or amounts of the discounts or,
 309 alternatively, a fee schedule which reflects the provider's
 310 discounted rates.

311 (c) A statement that the provider will not charge members
 312 more than the discounted rates.

313 (3) A provider agreement between a discount ~~medical~~ plan
 314 organization and a provider network must ~~shall~~ require that the
 315 provider network have written agreements with its providers
 316 which:

317 (a) Contain the terms described in subsection (2).

318 (b) Authorize the provider network to contract with the
 319 discount ~~medical~~ plan organization on behalf of the provider.

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320 (c) Require the network to maintain an up-to-date list of
 321 its contracted providers and to provide that list on a monthly
 322 basis to the discount ~~medical~~ plan organization.

323 (4) The discount ~~medical~~ plan organization shall maintain a
 324 copy of each active provider agreement into which it has
 325 entered.

326 Section 9. Section 636.216, Florida Statutes, is amended to
 327 read:

328 636.216 Written agreement Charge or form filings.—

329 ~~(1) All charges to members must be filed with the office~~
 330 ~~and any charge to members greater than \$30 per month or \$360 per~~
 331 ~~year must be approved by the office before the charges can be~~
 332 ~~used. The discount medical plan organization has the burden of~~
 333 ~~proof that the charges bear a reasonable relation to the~~
 334 ~~benefits received by the member.~~

335 ~~(2) There must be a written agreement between the discount~~
 336 ~~medical plan organization and the member specifying the benefits~~
 337 ~~under the discount ~~medical~~ plan and complying with the~~
 338 ~~disclosure requirements of this part.~~

339 ~~(3) All forms used, including the written agreement~~
 340 ~~pursuant to subsection (2), must first be filed with and~~
 341 ~~approved by the office. Every form filed shall be identified by~~
 342 ~~a unique form number placed in the lower left corner of each~~
 343 ~~form.~~

344 ~~(4) A charge or form is considered approved on the 60th day~~
 345 ~~after its date of filing unless it has been previously~~
 346 ~~disapproved by the office. The office shall disapprove any form~~
 347 ~~that does not meet the requirements of this part or that is~~
 348 ~~unreasonable, discriminatory, misleading, or unfair. If such~~

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349 ~~filings are disapproved, the office shall notify the discount~~
 350 ~~medical plan organization and shall specify in the notice the~~
 351 ~~reasons for disapproval.~~

352 Section 10. Section 636.228, Florida Statutes, is amended
 353 to read:

354 636.228 Marketing of discount ~~medical~~ plans.—

355 (1) All advertisements, marketing materials, brochures, and
 356 discount cards used by marketers must be approved in writing ~~for~~
 357 ~~such use~~ by the discount ~~medical~~ plan organization.

358 (2) The discount ~~medical~~ plan organization must ~~shall~~ have
 359 an executed written agreement with a marketer before ~~prior to~~
 360 the marketer's marketing, promoting, selling, or distributing
 361 the discount ~~medical~~ plan. Such agreement must ~~shall~~ prohibit
 362 the marketer from using marketing materials, brochures, and
 363 discount cards without the approval in writing by the discount
 364 ~~medical~~ plan organization. The discount ~~medical~~ plan
 365 organization may delegate functions to its marketers but shall
 366 be bound by any acts of its marketers, within the scope of the
 367 delegation, which marketers' agency, that do not comply with the
 368 ~~provisions of~~ this part.

369 Section 11. Section 636.230, Florida Statutes, is amended
 370 to read:

371 636.230 Bundling discount ~~medical~~ plans with other
 372 products.—A marketer or discount plan organization selling a
 373 discount plan with medical services and other services may
 374 commingle those products on a single page of forms,
 375 advertisements, marketing materials, or brochures ~~When a~~
 376 ~~marketer or discount medical plan organization sells a discount~~
 377 ~~medical plan together with any other product, the fees for the~~

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378 ~~discount medical plan must be provided in writing to the member~~
 379 ~~if the fees exceed \$30.~~

380 Section 12. Section 636.232, Florida Statutes, is amended
 381 to read:

382 636.232 Rules.—The commission may adopt rules to administer
 383 this part, including rules for the licensing of discount ~~medical~~
 384 ~~plan organizations,~~ establishing standards for evaluating
 385 ~~forms, advertisements, marketing materials, brochures, and~~
 386 ~~discount cards,~~ providing for the collection of data, relating
 387 to disclosures to plan members, and defining terms used in this
 388 part.

389 Section 13. Paragraph (b) of subsection (5) of section
 390 408.9091, Florida Statutes, is amended to read:

391 408.9091 Cover Florida Health Care Access Program.—

392 (5) PLAN PROPOSALS.—The agency and the office shall
 393 announce, no later than July 1, 2008, an invitation to negotiate
 394 for Cover Florida plan entities to design a Cover Florida plan
 395 proposal in which benefits and premiums are specified.

396 (b) The agency and the office may announce an invitation to
 397 negotiate for the design of Cover Florida Plus products to
 398 companies that offer supplemental insurance, discount ~~medical~~
 399 plan organizations licensed under part II of chapter 636, or
 400 prepaid health clinics licensed under part II of chapter 641.

401 Section 14. Paragraph (d) of subsection (2) and paragraph
 402 (d) of subsection (4) of section 408.910, Florida Statutes, are
 403 amended to read:

404 408.910 Florida Health Choices Program.—

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

406 (d) "Insurer" means an entity licensed under chapter 624

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407 which offers an individual health insurance policy or a group
 408 health insurance policy, a preferred provider organization as
 409 defined in s. 627.6471, an exclusive provider organization as
 410 defined in s. 627.6472, ~~or~~ a health maintenance organization
 411 licensed under part I of chapter 641, or a prepaid limited
 412 health service organization or discount ~~medical~~ plan
 413 organization licensed under chapter 636.

414 (4) ELIGIBILITY AND PARTICIPATION.—Participation in the
 415 program is voluntary and shall be available to employers,
 416 individuals, vendors, and health insurance agents as specified
 417 in this subsection.

418 (d) All eligible vendors who choose to participate and the
 419 products and services that the vendors are permitted to sell are
 420 as follows:

421 1. Insurers licensed under chapter 624 may sell health
 422 insurance policies, limited benefit policies, other risk-bearing
 423 coverage, and other products or services.

424 2. Health maintenance organizations licensed under part I
 425 of chapter 641 may sell health maintenance contracts, limited
 426 benefit policies, other risk-bearing products, and other
 427 products or services.

428 3. Prepaid limited health service organizations may sell
 429 products and services as authorized under part I of chapter 636,
 430 and discount ~~medical~~ plan organizations may sell products and
 431 services as authorized under part II of chapter 636.

432 4. Prepaid health clinic service providers licensed under
 433 part II of chapter 641 may sell prepaid service contracts and
 434 other arrangements for a specified amount and type of health
 435 services or treatments.

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436 5. Health care providers, including hospitals and other
 437 licensed health facilities, health care clinics, licensed health
 438 professionals, pharmacies, and other licensed health care
 439 providers, may sell service contracts and arrangements for a
 440 specified amount and type of health services or treatments.

441 6. Provider organizations, including service networks,
 442 group practices, professional associations, and other
 443 incorporated organizations of providers, may sell service
 444 contracts and arrangements for a specified amount and type of
 445 health services or treatments.

446 7. Corporate entities providing specific health services in
 447 accordance with applicable state law may sell service contracts
 448 and arrangements for a specified amount and type of health
 449 services or treatments.

450
 451 A vendor described in subparagraphs 3.-7. may not sell products
 452 that provide risk-bearing coverage unless that vendor is
 453 authorized under a certificate of authority issued by the Office
 454 of Insurance Regulation and is authorized to provide coverage in
 455 the relevant geographic area. Otherwise eligible vendors may be
 456 excluded from participating in the program for deceptive or
 457 predatory practices, financial insolvency, or failure to comply
 458 with the terms of the participation agreement or other standards
 459 set by the corporation.

460 Section 15. Subsection (11) of section 627.64731, Florida
 461 Statutes, is amended to read:

462 627.64731 Leasing, renting, or granting access to a
 463 participating provider.—

464 (11) This section does not apply to a contract between a

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465 contracting entity and a discount ~~medical~~ plan organization
466 licensed or exempt under part II of chapter 636.

467 Section 16. Paragraph (c) of subsection (7) of section
468 636.003, Florida Statutes, is amended to read:

469 636.003 Definitions.—As used in this act, the term:

470 (7) "Prepaid limited health service organization" means any
471 person, corporation, partnership, or any other entity which, in
472 return for a prepayment, undertakes to provide or arrange for,
473 or provide access to, the provision of a limited health service
474 to enrollees through an exclusive panel of providers. Prepaid
475 limited health service organization does not include:

476 (c) Any person who is licensed pursuant to part II as a
477 discount ~~medical~~ plan organization.

478 Section 17. Paragraphs (c) and (d) of subsection (1) of
479 section 636.205, Florida Statutes, are amended to read:

480 636.205 Issuance of license; denial.—

481 (1) Following receipt of an application filed pursuant to
482 s. 636.204, the office shall review the application and notify
483 the applicant of any deficiencies contained therein. The office
484 shall issue a license to an applicant who has filed a completed
485 application pursuant to s. 636.204 upon payment of the fees
486 specified in s. 636.204 and upon the office being satisfied that
487 the following conditions are met:

488 (c) The ownership, control, and management of the entity
489 are competent and trustworthy and possess managerial experience
490 that would make the proposed operation beneficial to the
491 subscribers. The office may ~~shall~~ not grant or continue to grant
492 authority to transact the business of a discount ~~medical~~ plan
493 organization in this state at any time during which the office

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494 has good reason to believe that the ownership, control, or
495 management of the organization includes any person whose
496 business operations are or have been marked by business
497 practices or conduct that is detrimental to the public,
498 stockholders, investors, or creditors.

499 (d) The discount ~~medical~~ plan organization has a complaint
500 procedure that will facilitate the resolution of subscriber
501 grievances and that includes both formal and informal steps
502 available within the organization.

503 Section 18. Section 636.207, Florida Statutes, is amended
504 to read:

505 636.207 Applicability of part.—Except as otherwise provided
506 in this part, discount ~~medical~~ plan organizations are governed
507 by ~~the provisions of~~ this part and are exempt from the Florida
508 Insurance Code unless specifically referenced.

509 Section 19. Section 636.210, Florida Statutes, is amended
510 to read:

511 636.210 Prohibited activities of a discount ~~medical~~ plan
512 organization.—

513 (1) A discount ~~medical~~ plan organization may not:

514 (a) Use in its advertisements, marketing material,
515 brochures, and discount cards the term "insurance" except as
516 otherwise provided in this part or as a disclaimer of any
517 relationship between discount ~~medical~~ plan organization benefits
518 and insurance;

519 (b) Use in its advertisements, marketing material,
520 brochures, and discount cards the terms "health plan,"
521 "coverage," "copay," "copayments," "preexisting conditions,"
522 "guaranteed issue," "premium," "PPO," "preferred provider

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523 organization," or other terms in a manner that could reasonably
524 mislead a person into believing the discount ~~medical~~ plan was
525 health insurance;

526 (c) Have restrictions on free access to plan providers,
527 including, but not limited to, waiting periods and notification
528 periods; or

529 (d) Pay providers any fees for medical services.

530 (2) A discount ~~medical~~ plan organization may not collect or
531 accept money from a member for payment to a provider for
532 specific medical services furnished or to be furnished to the
533 member unless the organization has an active certificate of
534 authority from the office to act as an administrator.

535 Section 20. Subsection (1), paragraphs (b), (c), and (d) of
536 subsection (2), and subsection (3) of section 636.218, Florida
537 Statutes, are amended to read:

538 636.218 Annual reports.—

539 (1) Each discount ~~medical~~ plan organization shall ~~must~~ file
540 with the office, within 3 months after the end of each fiscal
541 year, an annual report.

542 (2) Such reports must be on forms prescribed by the
543 commission and must include:

544 (b) If different from the initial application or the last
545 annual report, a list of the names and residence addresses of
546 all persons responsible for the conduct of the organization's
547 affairs, together with a disclosure of the extent and nature of
548 any contracts or arrangements between such persons and the
549 discount ~~medical~~ plan organization, including any possible
550 conflicts of interest.

551 (c) The number of discount ~~medical~~ plan members in the

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552 state.

553 (d) Such other information relating to the performance of
554 the discount ~~medical~~ plan organization as is reasonably required
555 by the commission or office.

556 (3) Every discount ~~medical~~ plan organization that ~~which~~
557 fails to file an annual report in the form and within the time
558 required by this section shall forfeit up to \$500 for each day
559 for the first 10 days during which the neglect continues and
560 shall forfeit up to \$1,000 for each day after the first 10 days
561 during which the neglect continues; and, upon notice by the
562 office to that effect, the organization's authority to enroll
563 new members or to do business in this state ceases while such
564 default continues. The office shall deposit all sums collected
565 by the office under this section to the credit of the Insurance
566 Regulatory Trust Fund. The office may not collect more than
567 \$50,000 for each report.

568 Section 21. Section 636.220, Florida Statutes, is amended
569 to read:

570 636.220 Minimum capital requirements.—

571 (1) Each discount ~~medical~~ plan organization shall ~~must~~ at
572 all times maintain a net worth of at least \$150,000.

573 (2) The office may not issue a license unless the discount
574 ~~medical~~ plan organization has a net worth of at least \$150,000.

575 Section 22. Section 636.222, Florida Statutes, is amended
576 to read:

577 636.222 Suspension or revocation of license; suspension of
578 enrollment of new members; terms of suspension.—

579 (1) The office may suspend the authority of a discount
580 ~~medical~~ plan organization to enroll new members, revoke any

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581 license issued to a discount ~~medical~~ plan organization, or order
582 compliance if the office finds that any of the following
583 conditions exist:

584 (a) The organization is not operating in compliance with
585 this part.

586 (b) The organization does not have the minimum net worth as
587 required by this part.

588 (c) The organization has advertised, merchandised, or
589 attempted to merchandise its services in such a manner as to
590 misrepresent its services or capacity for service or has engaged
591 in deceptive, misleading, or unfair practices with respect to
592 advertising or merchandising.

593 (d) The organization is not fulfilling its obligations as a
594 ~~medical~~ discount ~~medical~~ plan organization.

595 (e) The continued operation of the organization would be
596 hazardous to its members.

597 (2) If the office has cause to believe that grounds for the
598 suspension or revocation of a license exist, the office must
599 ~~shall~~ notify the discount ~~medical~~ plan organization in writing
600 specifically stating the grounds for suspension or revocation
601 and shall pursue a hearing on the matter in accordance with ~~the~~
602 ~~provisions of~~ chapter 120.

603 (3) When the license of a discount ~~medical~~ plan
604 organization is surrendered or revoked, such organization must
605 proceed, immediately following the effective date of the order
606 of revocation, to wind up its affairs transacted under the
607 license. The organization may not engage in any further
608 advertising, solicitation, collecting of fees, or renewal of
609 contracts.

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610 (4) The office shall, in its order suspending the authority
611 of a discount ~~medical~~ plan organization to enroll new members,
612 specify the period during which the suspension is to be in
613 effect and the conditions, if any, which must be met by the
614 discount ~~medical~~ plan organization ~~before~~ prior to reinstatement
615 of its license to enroll new members. The order of suspension is
616 subject to rescission or modification by further order of the
617 office ~~before~~ prior to the expiration of the suspension period.
618 Reinstatement may not be made unless requested by the discount
619 ~~medical~~ plan organization; however, the office may not grant
620 reinstatement if it finds that the circumstances for which the
621 suspension occurred still exist or are likely to recur.

622 Section 23. Section 636.223, Florida Statutes, is amended
623 to read:

624 636.223 Administrative penalty.—In lieu of suspending or
625 revoking a certificate of authority whenever any discount
626 ~~medical~~ plan organization has been found to have violated any
627 provision of this part, the office may:

628 (1) Issue and cause to be served upon the organization
629 charged with the violation a copy of such findings and an order
630 requiring such organization to cease and desist from engaging in
631 the act or practice that constitutes the violation.

632 (2) Impose a monetary penalty of not less than \$100 for
633 each violation, but not to exceed an aggregate penalty of
634 \$75,000.

635 Section 24. Section 636.224, Florida Statutes, is amended
636 to read:

637 636.224 Notice of change of name or address of discount
638 ~~medical~~ plan organization.—Each discount ~~medical~~ plan

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639 organization must provide the office at least 30 days' advance
640 notice of any change in the discount ~~medical~~ plan organization's
641 name, address, principal business address, or mailing address.

642 Section 25. Section 636.226, Florida Statutes, is amended
643 to read:

644 636.226 Provider name listing.—Each discount ~~medical~~ plan
645 organization must maintain on an Internet website an up-to-date
646 list of the names and addresses of the providers with which it
647 has contracted, ~~on an Internet website page~~, the address of
648 which must ~~shall~~ be prominently displayed on all its
649 advertisements, marketing materials, brochures, and discount
650 cards. This section applies to those providers with whom the
651 discount ~~medical~~ plan organization has contracted directly, as
652 well as those who are members of a provider network with which
653 the discount ~~medical~~ plan organization has contracted.

654 Section 26. Section 636.234, Florida Statutes, is amended
655 to read:

656 636.234 Service of process on a discount ~~medical~~ plan
657 organization.—Sections 624.422 and 624.423 apply to a discount
658 ~~medical~~ plan organization as if the discount ~~medical~~ plan
659 organization were an insurer.

660 Section 27. Section 636.236, Florida Statutes, is amended
661 to read:

662 636.236 Surety bond or security deposit.—
663 (1) Each discount ~~medical~~ plan organization licensed
664 pursuant to ~~the provisions of~~ this part shall ~~must~~ maintain in
665 force a surety bond in its own name in an amount not less than
666 \$35,000 to be used at the discretion of the office to protect
667 the financial interests of members who may be adversely affected

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668 by the insolvency of a discount ~~medical~~ plan organization. The
669 bond must be issued by an insurance company that is licensed to
670 do business in this state.

671 (2) In lieu of the bond specified in subsection (1), a
672 licensed discount ~~medical~~ plan organization may deposit and
673 maintain deposited in trust with the department securities
674 eligible for deposit under s. 625.52 having at all times a value
675 of not less than \$35,000. If a licensed discount ~~medical~~ plan
676 organization substitutes its deposited securities under this
677 subsection with a surety bond authorized in subsection (1), such
678 deposited securities must ~~shall~~ be returned to the discount
679 ~~medical~~ plan organization no later than 45 days following the
680 effective date of the surety bond.

681 (3) A ~~No~~ judgment creditor or other claimant of a discount
682 ~~medical~~ plan organization, other than the office or department,
683 does not ~~shall~~ have the right to levy upon any of the assets or
684 securities held in this state as a deposit under subsections (1)
685 and (2).

686 Section 28. Subsections (2) and (3) of section 636.238,
687 Florida Statutes, are amended to read:

688 636.238 Penalties for violation of this part.—

689 (2) A person who operates as or willfully aids and abets
690 another operating as a discount ~~medical~~ plan organization in
691 violation of s. 636.204(1) commits a felony punishable as
692 provided for in s. 624.401(4)(b), as if the unlicensed discount
693 ~~medical~~ plan organization were an unauthorized insurer, and the
694 fees, dues, charges, or other consideration collected from the
695 members by the unlicensed discount ~~medical~~ plan organization or
696 marketer were insurance premium.

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697 (3) A person who collects fees for purported membership in
698 a discount ~~medical~~ plan but purposefully fails to provide the
699 promised benefits commits a theft, punishable as provided in s.
700 812.014.

701 Section 29. Subsection (1) of section 636.240, Florida
702 Statutes, is amended to read:

703 636.240 Injunctions.—

704 (1) In addition to the penalties and other enforcement
705 provisions of this part, the office may seek both temporary and
706 permanent injunctive relief when:

707 (a) A discount ~~medical~~ plan is being operated by any person
708 or entity that is not licensed pursuant to this part.

709 (b) Any person, entity, or discount ~~medical~~ plan
710 organization has engaged in any activity prohibited by this part
711 or any rule adopted pursuant to this part.

712 Section 30. Section 636.244, Florida Statutes, is amended
713 to read:

714 636.244 Unlicensed discount ~~medical~~ plan organizations.—

715 Sections ~~The provisions of ss.~~ 626.901-626.912 apply to the
716 activities of an unlicensed discount ~~medical~~ plan organization
717 as if the unlicensed discount ~~medical~~ plan organization were an
718 unauthorized insurer.

719 Section 31. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 23, 2017

I respectfully request that **Senate Bill # 430**, relating to Discount Plan Organizations, be placed on the:

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

A handwritten signature in blue ink 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)

4/20/17

Meeting Date

430

Bill Number (if applicable)

Topic Discount Plan Organizations

Amendment Barcode (if applicable)

Name Chris Schoonover

Job Title _____

Address 101 E. College Ave. Ste. 502

Phone 850-264-7588

Street

Tallahassee

City

FL

State

32301

Zip

Email cschoonover@capcityconsult.com

Speaking: For Against Information

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

Representing Consumer Health Alliance

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 Appropriations

BILL: CS/SB 446

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Passidomo

SUBJECT: Underground Facilities

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Mitchell</u>	<u>Rogers</u>	<u>EP</u>	Fav/CS
2.	<u>Caldwell</u>	<u>Caldwell</u>	<u>CU</u>	Favorable
3.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
4.	<u>Harkness</u>	<u>Hansen</u>	<u>AP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 446 amends ch. 556, F.S., the “Underground Facility Damage Prevention and Safety Act” by:

- Requiring an excavator that causes contact with or damage to any pipe or other underground facility to immediately report the contact or damage by calling 911 if any natural gas or other hazardous substance or hazardous material regulated by the Pipeline and Hazardous Materials Safety Administration (PHMSA) of the U.S. Department of Transportation (USDOT) has escaped;
- Requiring a member operator to file a report with the Sunshine State One-Call of Florida (SSOCF) system of all events it has received notice of through the system which have resulted in damages to its underground facilities. The report must be submitted at least on an annual basis or more frequently at the option and sole discretion of the member operator and must include, if known, the cause, nature, and location of the damage;
- Providing that, if a citation is issued by a state law enforcement officer, 80 percent of the civil penalty collected by the clerk of the court for the citation will be distributed to the governmental entity whose employee issued it; and
- Requiring the Sunshine State One-Call of Florida (SSOCF) board of director’s annual progress report to the Legislature and the Governor on the participation by municipalities and counties in the one-call notification system, to include a summary of the damage reporting data received by the system for the preceding year and any analysis of the data by the board.

The bill may have an insignificant, positive impact on state government revenues.

The bill has an effective date of July 1, 2017.

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 purpose of the Act is to identify and locate underground facilities¹ prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities.² To accomplish this, the Act creates a not-for-profit corporation to administer a free-access notification system whereby a person intending to conduct excavation or demolition activities can give prior notice through the system of the person’s intended activities. Prior notifications provide operators of underground facilities the opportunity to identify and locate their nearby facilities.³ All operators of underground facilities in the state are required to be members of the corporation (“member operators”) and are required to use and participate in the system.⁴

The not-for-profit corporation created under the Act is Sunshine State One-Call of Florida, Inc. (SSOCF), which exercises its powers through a board of directors.⁵ The system provides a single toll-free telephone number within Florida which excavators use to notify member operators of planned excavation or demolition activities.⁶ An excavator must notify the system not less than two full business days before beginning the operations.⁷ The excavator must also provide specified identification, location, and operational information which remain valid for 30 calendar days.⁸ Upon receipt of this notice, the system provides to the person a list of names of the member operators who will be advised of the notification and a notification number which specifies the date and time of the notification.⁹

¹ Section 556.102(13), F.S., defines “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.”

² Section 556.101(3), F.S.

³ Section 556.101(2), F.S.

⁴ Section 556.103(1), F.S.

⁵ Section 556.103, F.S.

⁶ Section 556.104, F.S.

⁷ Section 556.105(1)(a), F.S. The statute provides an exception to this requirement for excavation beneath state waters, but does not specify a time frame for notifying the system of such an excavation.

⁸ Section 556.105(1)(c), F.S.

⁹ Section 556.105(3), F.S.

The system operator in turn notifies the potentially affected member operators of the planned excavation or demolition activities.¹⁰ Within two 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 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.¹¹ If this cannot be done within two business days after notification is received, 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. An excavator is required to delay excavations until one of the following events occurs:

- All affected 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
- The time allowed for markings has expired.

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 the excavator does so with reasonable care and uses detection equipment or other acceptable means to locate underground facilities. An excavator may not conduct demolition in an area until all member operators' underground facilities have been marked and located or removed.¹²

The Act also establishes violations of certain provisions as noncriminal infractions that are enforceable by citations which may be issued by any local or state law enforcement officer, government code inspector, or code enforcement officer. The Act establishes a civil penalty of \$500, plus court costs, for such infractions.¹³ If a citation is issued by a local law enforcement officer, a local government code inspector, or a code enforcement officer, 80 percent of the civil penalty collected by the clerk of the court will be distributed to the governmental entity whose employee issued the citation, with 20 percent of the penalty retained by the clerk of the court to cover administrative costs.¹⁴ If a citation is issued by a state law enforcement officer, the civil penalty collected by the clerk of the court is retained by the clerk for deposit into the fine and forfeiture fund established pursuant to s. 142.01, F.S.¹⁵ The fine and forfeiture fund is established by the clerk of the circuit court in each county of this state and functions as a separate fund for use by the clerk of the circuit court in performing court-related functions.

By March 31 of each year, each clerk of court must submit a report to Sunshine State One-Call of Florida (SSOCF) 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.¹⁶ The report must state the name

¹⁰ Section 556.105(5), F.S. The statute also provides that 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.

¹¹ Section 556.105(5), F.S.

¹² Section 556.105(6), F.S.

¹³ Section 556.107(1), F.S.

¹⁴ Section 556.107(1)(c), F.S.

¹⁵ *Id.*

¹⁶ Section 556.107(2), F.S.

and address of the member or excavator who committed each infraction and indicate whether or not the civil penalty for the infraction was paid.¹⁷ The Florida Court Clerks and Comptrollers reported that a total of 23 citations were issued statewide under the Act in 2015, and a total of 19 citations were issued in 2016. None of these citations were issued by state law enforcement officers.¹⁸ Additionally, the SSOFCF board must submit an annual progress report, including a summary of the reports to the system from the clerks of court, to the Governor, no later than 60 days before the convening of each regular session of the Legislature.¹⁹ The SSOFCF board must also submit to the President of the Senate, the Speaker of the House of Representatives, and the Governor, no later than 60 days before the convening of each regular session of the Legislature, an annual progress report on the participation by municipalities and counties in the one-call notification system, including a summary of the reports to the system from the clerks of court.²⁰

U.S. Department of Transportation Pipeline and Hazardous Material Safety Administration - Pipeline Damage Prevention Programs

The U.S. Department of Transportation (USDOT) 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.²¹

On July 13, 2015, the U.S. Department of Transportation (USDOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) announced the issuance of a final rule to establish the process for evaluating state excavation damage prevention law enforcement programs and enforce minimum Federal damage prevention standards in states where damage prevention law enforcement is deemed inadequate or does not exist.²²

Under its rule,²³ Pipeline and Hazardous Materials Safety Administration (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?

¹⁷ *Id.*

¹⁸ Email message dated March 7, 2017, from Christopher J. Campbell, Director, Legislative and Government Affairs, Florida Court Clerks and Comptrollers (on file with Senate Environmental Preservation and Conservation Committee).

¹⁹ Section 556.103(4), F.S.

²⁰ Section 556.103(5), F.S.

²¹ 49 U.S.C. s, 60114.

²² U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, *About Excavation Enforcement Final Rule*, <http://phmsa.dot.gov/pipeline/safety-awareness-and-outreach/excavator-enforcement> (last visited March 20, 2017).

²³ U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, *Pipeline Safety: Pipeline Damage Prevention Programs*, 80 Fed. Reg. 43,836 (July 23, 2015) (codified at 49 C.F.R. Pts. 196 and 198).

- 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?
- At a minimum, does the state’s excavation damage prevention program include the following requirements?:
 - 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 without regard to 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 or 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.²⁴

Hazardous substances regulated by Pipeline and Hazardous Materials Safety Administration (PHMSA) include a host of chemical and radionuclides found in appendix A of Title 49, C.F.R., s. 172.101,²⁵ but do not include petroleum or crude oil, or natural gas in various states or mixtures.²⁶ Petroleum, crude oil, and natural gas are hazardous materials, regulated by PHMSA in Title 49, C.F.R., s. 172.101.²⁷ The Sunshine State One-Call of Florida (SSOCF) has identified proposals that will enhance the effectiveness of the Act according to the criteria adopted by PHMSA. They are reflected in the provisions of this bill.

III. Effect of Proposed Changes:

Procedures for Contact or Damage

If an excavator’s contact with or damage to an underground pipe or any other underground facility results in the escape of any natural gas or other hazardous substance or hazardous

²⁴ *Id.*

²⁵ U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, *Subchapter C - Hazardous Materials Regulations*, 49 C.F.R. s. 172.101, available at <https://www.gpo.gov/fdsys/pkg/CFR-2016-title49-vol2/xml/CFR-2016-title49-vol2-sec172-101.xml> (last visited March 20, 2017).

²⁶ See 49 C.F.R. s. 171.8 for definitions of “hazardous material” and “hazardous substance,” available at <https://www.gpo.gov/fdsys/pkg/CFR-2016-title49-vol2/xml/CFR-2016-title49-vol2-sec171-8.xml>. (last visited March 20, 2017).

²⁷ U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, *Subchapter C - Hazardous Materials Regulations*, 49 C.F.R. s. 172.101, available at <https://www.gpo.gov/fdsys/pkg/CFR-2016-title49-vol2/xml/CFR-2016-title49-vol2-sec172-101.xml>.

material regulated by the Pipeline and Hazardous Materials Safety Administration (PHMSA), the excavator must immediately report the contact or damage by calling the 911 emergency telephone number.

Section 2 amends s. 556.105, F.S., to require a member operator to file with the Sunshine State One-Call of Florida (SSOCF) system a report of all events it has received notice of through the system that have resulted in damages to any pipe, cable or the cable's protective covering, or other underground facility. Member operators must submit these reports at least annually to the system, no later than March 31, for all such events that occurred in the prior calendar year. Member operators may, at their option and sole discretion, submit the reports to the system on a more frequent basis. These member operator reports are required to include, if known, the cause, nature, and location of the damage. The bill also requires the system to establish and maintain a process to facilitate submission of reports by member operators.

These reporting requirements enhance the Underground Facility Damage Prevention and Safety Act (Act) and may provide the procedures necessary to meet the requirements of the 2015 rule that contains the criteria used by the Pipeline and Hazardous Materials Safety Administration (PHMSA) in its evaluation of the effectiveness of Florida's damage prevention enforcement program.

Civil Penalty Citations

Section 3 amends s. 556.107, F.S., to remove the current provision that directs civil penalties collected by clerks of court from citations issued by state law enforcement officers to be retained by the clerk for deposit into the fine and forfeiture fund. Under this section, 80 percent of the penalty resulting from a citation issued by a state law enforcement officer will be distributed to the state, and 20 percent of the penalty will be retained by the clerk of the court to cover administrative costs, in addition to other court costs. Eighty percent of the penalty resulting from a citation issued by a local government entity will continue to go to the local government that issues the citation.

Annual Progress Report on Participation by Municipalities and Counties

Section 1 amends s. 556.103, F.S., to require the Sunshine State One-Call of Florida (SSOCF) board of director's annual progress report to the President of the Senate, the Speaker of the House of Representatives, and the Governor on the participation by municipalities and counties in the one-call notification system to include:

- A summary of the damage reporting data received by the system for the preceding year regarding events that damage underground facilities, including information from member operator reports and from notifications member operators receive from excavators that have made contact with or damaged underground facilities, including information regarding temporary or permanent repairs to the facilities resulting from any contact or damage and 911 calls made as a result of the escape of substances from underground facilities that have been impacted; and
- Any analysis of the data by the board.

This expansion of information provided in an annual progress report may provide the data necessary to meet the requirements of Pipeline and Hazardous Materials Safety Administration (PHMSA) in its evaluation of the effectiveness of Florida's damage prevention enforcement program.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Although the bill shifts revenues currently retained by the clerk of the court in the fine and forfeiture fund to the state agencies that issue certain citations, the provisions of Art. VII, sec. 19 of the State Constitution do not appear to apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The requirement that a member operator file an annual report with the Sunshine State One-Call of Florida (SSOCF) if an excavation or demolition event damages any of its pipes, cables, or other underground facilities does not appear to be a significant economic impact on the private sector.

C. Government Sector Impact:

The bill may result in an insignificant increase in state revenues as a result of state law enforcement entities issuing citations for violations. The Florida Court Clerks and Comptrollers reports that 23 citations were issued statewide under the "Underground Facility Damage Prevention and Safety Act" in 2015, and 19 citations were issued in 2016. However, in recent years, no citations have been issued by state law enforcement agencies.²⁸

VI. Technical Deficiencies:

None.

²⁸ Email message dated March 7, 2017, from Christopher J. Campbell, Director, Legislative and Government Affairs, Florida Court Clerks and Comptrollers (on file with Senate Environmental Preservation and Conservation Committee).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 556.103, 556.105, and 556.107.

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 Environmental Preservation and Conservation on March 14, 2017:

Includes hazardous materials with any natural gas or other hazardous substances as contents requiring an excavator to call 911 should any of them escape from an underground pipe or other underground facility as a result of contact or damage to the pipe or facility by the excavator.

- B. **Amendments:**

None.

By the Committee on Environmental Preservation and Conservation;
and Senator Passidomo

592-02439-17

2017446c1

A bill to be entitled

An act relating to underground facilities; amending s. 556.103, F.S.; revising the information that must be submitted to the Legislature annually by the board of directors of Sunshine State One-Call of Florida, Inc.; amending s. 556.105, F.S.; requiring excavators to call the 911 emergency telephone number under certain circumstances; requiring member operators to file a report with the free-access notification system under certain circumstances; providing reporting frequencies and required data to be submitted; amending s. 556.107, F.S.; specifying how certain civil penalties issued by state law enforcement officers shall be distributed; deleting a requirement that certain citations be deposited into the fine and forfeiture fund; providing an effective date.

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

Section 1. Subsection (5) of section 556.103, Florida Statutes, is amended to read:

556.103 Creation of the corporation; establishment of the board of directors; authority of the board; annual report.—

(5) The board of directors shall submit to the President of the Senate, the Speaker of the House of Representatives, and the Governor, not later than 60 days before the convening of each regular session of the Legislature, an annual progress report on the participation by municipalities and counties in the one-call notification system created by this chapter. The report must

Page 1 of 3

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

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include a summary of the reports to the system from the clerks of court, a summary of the damage reporting data received by the system under s. 556.105(12) for the preceding year, and any analysis of the data by the board of directors.

Section 2. Subsection (12) of section 556.105, Florida Statutes, is amended to read:

556.105 Procedures.—

(12) (a) If any contact with or damage to any pipe, cable, or its protective covering, or any other underground facility occurs, the excavator causing the contact or damage shall immediately notify the member operator. If contact with or damage to an underground pipe or any other underground facility results in the escape of any natural gas or other hazardous substance or material regulated by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation, the excavator must immediately report the contact or damage by calling the 911 emergency telephone number. Upon receiving notice, the member operator shall send personnel to the location as soon as possible to effect temporary or permanent repair of the contact or damage. Until such time as the contact or damage has been repaired, the excavator shall cease excavation or demolition activities that may cause further damage to such underground facility.

(b) If an event damages any pipe, cable or its protective covering, or other underground facility, the member operator receiving the notice shall file a report with the system. Reports must be submitted annually to the system, no later than March 31 for the prior calendar year, or more frequently at the option and sole discretion of the member operator. Each report

Page 2 of 3

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59 must describe, if known, the cause, nature, and location of the
60 damage. The system shall establish and maintain a process to
61 facilitate submission of reports by member operators.

62 Section 3. Paragraph (c) of subsection (1) of section
63 556.107, Florida Statutes, is amended to read:

64 556.107 Violations.—

65 (1) NONCRIMINAL INFRACTIONS.—

66 (c) Any excavator or member operator who commits a
67 noncriminal infraction under paragraph (a) may be required to
68 pay a civil penalty for each infraction, which is \$500 plus
69 court costs. If a citation is issued by a state law enforcement
70 officer, a local law enforcement officer, a local government
71 code inspector, or a code enforcement officer, 80 percent of the
72 civil penalty collected by the clerk of the court shall be
73 distributed to the local governmental entity whose employee
74 issued the citation and 20 percent of the penalty shall be
75 retained by the clerk to cover administrative costs, in addition
76 to other court costs. If a citation is issued by a state law
77 enforcement officer, the civil penalty collected by the clerk
78 shall be retained by the clerk for deposit into the fine and
79 forfeiture fund established pursuant to s. 142.01. Any person
80 who fails to properly respond to a citation issued pursuant to
81 paragraph (b) shall, in addition to the citation, be charged
82 with the offense of failing to respond to the citation and, upon
83 conviction, commits a misdemeanor of the second degree,
84 punishable as provided in s. 775.082 or s. 775.083. A written
85 warning to this effect must be provided at the time any citation
86 is issued pursuant to paragraph (b).

87 Section 4. This act shall take effect July 1, 2017.



**SENATOR KATHLEEN
PASSIDOMO**
28th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Healthy Policy, *Vice Chair*
Appropriations Subcommittee on Health
and
Human Services
Appropriations Subcommittee on
Transportation,
Tourism, and Economic Development
Commerce and Tourism

SELECT COMMITTEE:

Joint Select Committee on Collective
Bargaining

JOINT COMMITTEE:

Joint Legislative Auditing Committee

April 13, 2017

The Honorable Jack Latvala, Chair
Senate Committee on Appropriations
Florida Senate
201 Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Latvala:

CS/Senate Bill 446, Underground Utilities, has been referred to the Appropriations Committee. I would appreciate the placing of this bill on the committee agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Passidomo".

Kathleen C. Passidomo

Cc: Mike Hansen, Staff Director
Alicia Weiss, Committee Assistant

REPLY TO:

- 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
- 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5028

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/17

Meeting Date

446

Bill Number (if applicable)

Topic Underground Facilities

Amendment Barcode (if applicable)

Name Kari Hebrank

Job Title

Address 113 E College Ave. Suite 200

Phone 850-514-5183

Street

Tallahassee

FL

State

Zip

Email

Speaking: [] For [] Against [] Information

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

Representing NUCA of FL

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
APPEARANCE RECORD

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

4/20/2017

Meeting Date

SB 446

Bill Number (if applicable)

Topic Underground Facilities

Amendment Barcode (if applicable)

Name Bruce Kershner

Job Title _____

Address 231 West Bay Ave.

Phone 407-830-1882

Street

Longwood

FL

32750

Email rbkershner@att.net

City

State

Zip

Speaking: For Against Information

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

Representing Sunshine 811....Appearing as Sunshine 811 Board of Director & not for a pd. client

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 Appropriations

BILL: CS/CS/SB 534

INTRODUCER: Governmental Oversight and Accountability Committee; Community Affairs Committee; and Senator Perry

SUBJECT: Public Works Projects

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>Ferrin</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Wells</u>	<u>Hansen</u>	<u>AP</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 534 prohibits the state and its political subdivisions that contract for public works projects from imposing restrictive conditions on certain contractors, subcontractors, or material suppliers or carriers, except as otherwise required by federal or state law. Specifically, the state or political subdivision that contracts for a public works project may not require that a contractor, subcontractor, or material supplier or carrier engaged in the project:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.

Public works projects include only those projects for which 50 percent or more of the cost will be paid from state-appropriated funds.

The bill also prohibits the state or a political subdivision from restricting a qualified contractor, subcontractor, or material supplier or carrier from submitting a bid on any public works project or being awarded any contract, subcontract, material order, or carrying order. However, the prohibition does not apply to discriminatory vendors or those that have committed a public entity crime.

The bill has no impact on state revenues or expenditures.

The bill has an effective date of July 1, 2017.

II. Present Situation:

The Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for architect and engineering services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of architectural and engineering professionals.¹

The Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA) in 1973,² which specifies the necessary procedures when procuring professional services by an agency.³

Currently, the CCNA, codified in s. 287.055, F.S., specifies the process that state and local government agencies must follow when procuring the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper. The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:⁴

- A project, when the agency estimates the basic construction cost to exceed \$325,000.
- A planning or study activity, when the fee for professional services exceeds \$35,000.

The public notice must provide a general description of the project and describe how the interested consultants may apply for consideration.

The CCNA provides a two-phase selection process.⁵ In the first phase, the “competitive selection,” the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the bidders, ranked in order of preference, and considers the most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the most highly qualified bidders.⁶

¹ Forty-six states use this process. American Council of Engineering Companies, Qualifications-Based Selection Resource Center, available at <http://www.acec.org/advocacy/qbs/> (last visited Feb. 24, 2017).

² Chapter 73-19, Laws of Fla.

³ Section 287.055(2)(b), F.S., defines “agency” as the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term agency does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. 380.06, F.S., or ss. 163.3220-163.3243, F.S.

⁴ Section 287.055(3)(a)1., F.S.

⁵ Sections 287.055(4) and (5), F.S.

⁶ Section 287.055(4)(b), F.S., requires agencies to consider the following factors: the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and, the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid.⁷ Section 287.055(2)(d), F.S., defines the term “compensation” to mean the amount paid by the agency for professional services regardless of whether stated as compensation or as other types of rates.

In the second phase, the “competitive negotiation,” the agency negotiates compensation with the most qualified of the minimum three selected firms for professional services at compensation, which the agency determines, is “fair, competitive, and reasonable.”⁸ If the agency cannot negotiate a satisfactory contract, the agency must formally terminate negotiations with that firm and must then negotiate with the second most qualified firm.⁹ The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract.¹⁰ If the agency cannot negotiate a satisfactory contract with any of the three selected, the agency must select additional firms in order of their competence and qualifications and continue negotiations until it reaches a contract.¹¹ Once negotiations with a firm are terminated, the agency cannot resume negotiations with that firm for the project.

In October 2011, the Attorney General opined that local governments could not create a hybrid procurement process for awarding projects and are limited to utilizing statutorily defined procedures.¹²

Procurement of Construction Services for Public Property and Publicly Owned Buildings

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. Section 255.29, F.S., requires the Department of Management Services (DMS) to establish, by rule,¹³ the following construction contract procedures for:

- Determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract.
- Awarding each state agency construction project to the lowest qualified bidder. Additionally, DMS must provide procedures for cases in which DMS declares a valid emergency to exist, which would necessitate the waiver of the rules governing the award of state construction contracts to the lowest qualified bidder.
- Governing negotiations for construction contracts and modifications to contract documents when the DMS secretary determines that such negotiations are in the best interest of the state.

⁷ Section 287.055(4)(b), F.S.

⁸ Section 287.055(5)(a), F.S.

⁹ Section 287.055(5)(b), F.S.

¹⁰ *Id.*

¹¹ Section 287.055(5)(c), F.S.

¹² Op. Att’y Gen. Fla. 2011-21 (2011).

¹³ Chapter 60D-5, F.A.C., establishes the procedures for s. 255.29, F. S., which requires procedures be followed in advertising for bids for construction contracts; in determining the eligibility of potential bidders to submit proposals for construction contracts; in awarding construction contracts; for waiver of non-material bid deviations; for rejection of bids; for disqualification of contractors; and in requesting authority to negotiate contracts and in negotiating contracts.

- Entering into performance-based contracts for the development of public facilities when DMS determines the use of such contracts to be in the best interest of the state.

These procedures must include, but are not limited to:¹⁴

- Prequalification of bidders;
- Criteria to be used in developing requests for proposals which may provide for singular responsibility for design and construction, developer flexibility in material selection, construction techniques, and application of state-of-the-art improvements;
- Accelerated scheduling, including the development of plans, designs, and construction simultaneously; and
- Evaluation of proposals and award of contracts considering such factors as price, quality, and concept of the proposal.

The state must competitively bid contracts for construction projects that it projects to cost in excess of \$200,000.¹⁵ County, municipal, or other political subdivision contracts for construction projects that are projected to cost in excess of \$200,000 also must be bid competitively.¹⁶ Counties, municipalities, special districts,¹⁷ or other political subdivisions seeking to construct or improve a public building must bid the project competitively if the projected cost is in excess of \$300,000.¹⁸

The solicitation of competitive bids or proposals for any state construction project with anticipated costs of more than \$200,000 must be advertised publicly in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening.¹⁹ If the construction project is projected to exceed \$500,000, the advertisement must be published in the FAR at least 30 days prior to the bid opening, and at least once in a newspaper of general circulation in the county where the project is located 30 days prior to the bid opening.²⁰

Department of Management Services Convicted Vendors and Discriminatory Vendor Lists

The DMS is required to keep a convicted vendor list²¹ that identifies vendors who have committed a public entity crime.²² If a vendor is included on the convicted vendor list, the

¹⁴ Section 255.29(4)(a)-(d), F.S.

¹⁵ Section 255.0525(1), F.S. Also, see Rules 60D-5.002(2) and 60D-5.0073, F.A.C.

¹⁶ Section 255.0525(2), F.S.

¹⁷ Section 255.20(1), F.S. (Special district as defined in ch. 189, F.S.).

¹⁸ *Id.* For electrical work, local governments must bid projects competitively estimated to cost more than \$75,000.

¹⁹ Section 255.0525(1), F.S.

²⁰ *Id.* Similar publishing provisions apply to construction projects projected to cost more than \$200,000 for counties, municipalities, and political subdivisions. *See* Section 255.0525(2), F.S.

²¹ Section 287.133, F.S., and Rule 60A-1.006(5), F.A.C.

²² Section 287.133(1)(g), F.S., defines “public entity crime” as a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

vendor may not do business with the state²³ in excess of \$35,000 as provided in s. 287.017(2), F.S., for a period of 36 months following placement on the list.

The DMS also maintains a discriminatory vendor list that identifies vendors where a determination of liability by a state circuit court or a federal district court for a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion.²⁴ If DMS places a vendor on the discriminatory vendor list, the vendor may not do business with the state, and the state may not accept any bids or proposals or transact business with such vendor for a period of 36 months following placement on the list.²⁵

Preference for Employment of State Residents in Construction Contracts Funded By State Funds

Florida law provides a preference for the employment of state residents in construction contracts funded by state funds.²⁶ Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have substantially equal qualifications²⁷ to those of non-residents.²⁸ If a construction contract is funded by local funds, the contract may contain such a provision.²⁹ In addition, a contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.³⁰

Department of Transportation Construction Projects

Chapter 337, F.S., governs contracting by the Department of Transportation (DOT). In order for a person to bid for a construction contract in excess of \$250,000, DOT must certify such person as qualified.³¹ Certification is also required to bid on road, bridge, or public transportation construction projects of more than \$250,000.³² The purpose of certification is to ensure professional and financial competence relating to the performance of construction contracts by evaluating bidders "with respect to equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification."³³

²³ Section 287.134(2)(a), F.S. A vendor placed on the list may not submit bids or proposals to a public entity on a contract to provide goods and services; a contract for construction or repair of a public building or public work; or leases of real property. The vendor may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant with a public entity, and may not transact business with any public entity.

²⁴ Section 287.134, F.S.

²⁵ Section 287.134(2), F.S.

²⁶ Section 255.099(1), F.S.

²⁷ Section 255.099(1)(a), F.S., defines "substantially equal qualifications" as the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons.

²⁸ Section 255.099(1), F.S.

²⁹ *Id.*

³⁰ Section 255.099(1)(b), F.S.

³¹ Section 337.14(1), F.S. and ch. 14-22, F.A.C.

³² Section 337.14(2), F.S.

³³ Section 337.14(1), F.S.

An applicant seeking certification of qualification must include its latest annual financial statement completed within the last 12 months.³⁴ If the applicant submits an annual financial statement that was completed more than 4 months prior to the date on which DOT receives the application, then the applicant must submit an interim financial statement and an updated application.³⁵ A certified public accountant must audit each annual or interim financial statement.³⁶ If the applicant meets the qualifications, DOT issues a certificate of qualification that is valid for 18 months after the date of the applicant's financial statement, or a shorter period as DOT prescribes.³⁷ DOT may revoke such certificate of qualification for a contractor who was delinquent on a previously awarded contract.³⁸

DOT does not prohibit a qualified, licensed or certified contractor from bidding. However, a contract may not be awarded if the bid is determined to be irregular or non-responsive. DOT does require training for certain work categories, such as bridgework and other technical road and bridge areas.

Federal Labor and Wage Laws

The National Labor Relations Act of 1935³⁹ and the Labor Management Relations Act of 1947⁴⁰ constitute a comprehensive scheme of regulations guaranteeing employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce.

The Fair Labor Standards Act (FLSA) establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States.⁴¹ A state may set the rate higher than the federal minimum, but not lower.⁴² It also requires employers to pay time and a half to its employees for overtime hours worked,⁴³ and establishes standards for recordkeeping⁴⁴ and child labor.⁴⁵ Over 135 million workers are covered under the act,⁴⁶ most jobs are covered by the FLSA, but not all jobs are covered. In addition, some jobs are covered, but are considered "exempt" from the FLSA overtime requirements.⁴⁷

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Section 337.14(4), F.S.

³⁸ Section 337.16, F.S.

³⁹ 29 U.S.C. ss. 151 to 169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

⁴⁰ 29 U.S.C. ss. 141 to 187 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

⁴¹ 29 U.S.C. s. 206.

⁴² 29 U.S.C. s. 218(a).

⁴³ 29 U.S.C. s. 207.

⁴⁴ 29 U.S.C. s. 211.

⁴⁵ 29 U.S.C. s. 212.

⁴⁶ United States Department of Labor, Wage and Hour Division, <http://www.dol.gov/whd/workers.htm> (last visited Feb 24, 2017).

⁴⁷ 29 U.S.C. s. 213; http://www.dol.gov/whd/overtime_pay.htm (last visited Feb. 24, 2017).

On February 12, 2014, President Obama signed Executive Order 13658, which establishes a minimum wage for certain federal contractors.⁴⁸ The Executive Order requires parties who contract with the federal government to pay workers performing work on or in connection with covered federal contracts at least \$10.10 per hour beginning on January 1, 2015. Beginning January 1, 2016, and annually thereafter, employer must pay such workers an amount determined by the Secretary of Labor in accordance with the Executive Order. The order stated that “[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs.”⁴⁹

On September 20, 2016, the Department of Labor published a Notice in the Federal Register to announce that, beginning January 1, 2017, the Executive Order increases the minimum wage rate to \$10.20 per hour and tipped employees performing work on or in connection with covered contracts generally must be paid a minimum cash wage at \$6.80 per hour.⁵⁰

State Labor and Wage Regulations

Article I, Section 6 of the State Constitution creates a constitutional right to collectively bargain for public sector employees. It provides, in pertinent part, that “[t]he right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” The Florida Supreme Court has held that public employees maintain the same rights to collectively bargain as do private employees.⁵¹

In addition, the State Constitution provides that “[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.”⁵² The State Constitution requires that employers pay employees no less than the minimum wage for all hours worked in Florida.⁵³ The current state minimum wage is \$8.10 per hour,⁵⁴ which is higher than the federal rate.⁵⁵

⁴⁸ A copy of the Executive Order can be found online at <http://www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors> (last visited Feb. 24, 2017).

⁴⁹ *Id.*

⁵⁰ United States Department of Labor, Wage and Hour Division, Final Rule: Executive Order 13658, Establishing a Minimum Wage for Contractors, <https://www.dol.gov/whd/flsa/eo13658/index.htm> (last visited Feb. 24, 2017).

⁵¹ See *Hillsborough Cnty. Gov'tl Emps. Ass'n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So.2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm'n*, 410 So.2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass'n v. Legislature of Fla.*, 269 So.2d 684 (Fla. 1972).

⁵² Article X, s. 24(a), FLA. CONST. and s. 448.110, F.S.

⁵³ Article X, s. 24(c), FLA. CONST.

⁵⁴ <http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notices> (last visited Feb. 24, 2017).

⁵⁵ The federal minimum wage is \$7.25 per hour. For more information about federal minimum wage provisions, see <http://www.dol.gov/whd/minimumwage.htm> (last visited Feb. 24, 2017).

Federal Project Labor Agreements

In 2009, President Barack Obama signed Executive Order 13502 authorizing the use of project labor agreements for federal construction projects.⁵⁶ The Executive Order defines the term “project labor agreement” as a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f). The Executive Order provides that executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor if the agreement will advance the federal government’s goal of achieving economy and efficiency in procurement; produce labor-management stability; and ensure compliance with laws and regulations concerning safety, health, equal employment opportunity, and labor and employment standards.

Federal Prevailing Wage Requirements

The Davis-Bacon Act applies to contractors and subcontractors performing work on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair of public works projects or public buildings.⁵⁷ The United States Department of Labor, Wage and Hour Division, issues two types of wage determinations: general determinations (also known as area determinations) and project determinations. The wage and fringe benefits⁵⁸ in the applicable Davis-Bacon wage determination must be the minimum paid by contractors and subcontractors to laborers and mechanics.⁵⁹

III. Effect of Proposed Changes:

Section 1 creates s. 255.0992, F.S., relating to public works projects and prohibited governmental actions. The section defines the following terms:

- “Political subdivision” means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institute of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works.
- “Public works project” means an activity of which 50 percent or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation and which consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.

⁵⁶ A copy of the Executive Order can be found online at <https://www.gpo.gov/fdsys/pkg/FR-2009-02-11/pdf/E9-3113.pdf> (last visited Feb. 24, 2017); the Executive Order is codified in subpart 22.5 of the Federal Acquisition Regulation.

⁵⁷ 40 U.S.C. s. 3142(a).

⁵⁸ Examples of fringe benefits include life insurance, health insurance, pension, vacation, holidays, sick leave, and other “bona fide” fringe benefits. <http://www.dol.gov/whd/programs/dbra/faqs/fringes.htm#Fringe> (last visited Feb. 24, 2017).

⁵⁹ 40 U.S.C. s. 3142(b).

Except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not require that a contractor, subcontractor, or material supplier or carrier engaged in such project:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.

The bill also provides that the state or any political subdivision that contracts for a public works project may not prohibit a contractor, subcontractor, or material supplier or carrier able to perform such work who is qualified, licensed, or certified as required by state law to perform such work from submitting a bid on the public works project. However, this provision does not apply to the vendors specified in ss. 287.133(convicted vendor list) and 287.134(discriminatory vendor list), F.S.

Additionally, this section does not apply to contracts executed by the Department of Transportation under ch. 337, F.S.

Section 2 provides that this act shall take effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties or municipalities to spend funds, reduce the counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. **Government Sector Impact:**

The bill has no impact on state revenues or expenditures.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill creates section 255.0992 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 Governmental Oversight and Accountability on March 22, 2017:

- Ensures that vendors and companies who have violated state and federal law and appear on lists governed by s. 287.133 or s. 297.134, F.S., are not awarded a public works contract.

CS by Community Affairs on March 6, 2017:

- Revises the definition of “public works project” so that the term includes only an activity of which 50 percent or more of the cost will be paid from state-appropriated funds; and
- Clarifies that although the state or a political subdivision that contracts for a public works project may not prohibit certain qualified, licensed, or certified persons from submitting a bid or being awarded any contract, subcontract, material order, or carrying order, this provision does not apply to vendors listed under s. 287.133 or s. 287.134, F.S.

B. **Amendments:**

None.

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

585-02725-17

2017534c2

1 A bill to be entitled
2 An act relating to public works projects; creating s.
3 255.0992, F.S.; providing definitions; prohibiting the
4 state and political subdivisions that contract for
5 public works projects from imposing restrictive
6 conditions on certain contractors, subcontractors, or
7 material suppliers or carriers; prohibiting the state
8 and political subdivisions from restricting qualified
9 bidders from submitting bids; providing applicability;
10 providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Section 255.0992, Florida Statutes, is created
15 to read:
16 255.0992 Public works projects; prohibited governmental
17 actions.—
18 (1) As used in this section, the term:
19 (a) "Political subdivision" means a separate agency or unit
20 of local government created or established by law or ordinance
21 and the officers thereof. The term includes, but is not limited
22 to, a county; a city, town, or other municipality; or a
23 department, commission, authority, school district, taxing
24 district, water management district, board, public corporation,
25 institution of higher education, or other public agency or body
26 thereof authorized to expend public funds for construction,
27 maintenance, repair, or improvement of public works.
28 (b) "Public works project" means an activity of which 50
29 percent or more of the cost will be paid from state-appropriated

Page 1 of 2

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

585-02725-17

2017534c2

30 funds that were appropriated at the time of the competitive
31 solicitation and which consists of the construction,
32 maintenance, repair, renovation, remodeling, or improvement of a
33 building, road, street, sewer, storm drain, water system, site
34 development, irrigation system, reclamation project, gas or
35 electrical distribution system, gas or electrical substation, or
36 other facility, project, or portion thereof that is owned in
37 whole or in part by any political subdivision.
38 (2) (a) Except as required by federal or state law, the
39 state or any political subdivision that contracts for a public
40 works project may not require that a contractor, subcontractor,
41 or material supplier or carrier engaged in such project:
42 1. Pay employees a predetermined amount of wages or
43 prescribe any wage rate;
44 2. Provide employees a specified type, amount, or rate of
45 employee benefits;
46 3. Control, limit, or expand staffing; or
47 4. Recruit, train, or hire employees from a designated,
48 restricted, or single source.
49 (b) The state or any political subdivision that contracts
50 for a public works project may not prohibit any contractor,
51 subcontractor, or material supplier or carrier able to perform
52 such work who is qualified, licensed, or certified as required
53 by state law to perform such work from submitting a bid on the
54 public works project. This paragraph does not apply to vendors
55 listed pursuant to s. 287.133 or s. 287.134.
56 (3) This section does not apply to contracts executed under
57 chapter 337.
58 Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

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)

534

Meeting Date _____

Bill Number (if applicable) _____

Topic _____

Amendment Barcode (if applicable) _____

Name JESS MCCARTY

Job Title _____

Address 111 NW 1st ST

Phone _____

Street

MIAMI

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing MIAMI - DADE 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
APPEARANCE RECORD

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

4.20.17
Meeting Date

#534
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Ken Williams

Job Title _____

Address 7411 Meadow Dr

Phone 813-493-7685

Street

Tampa 71 33634

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

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

4-20-17

Meeting Date

534

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name LARRY DUPREE

Job Title _____

Address 8301 N RIVER HIGH LAND PL Phone 813 984 8828

Street

TAMPA

City

FL

State

33617

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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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)

4-20-17

Meeting Date

534

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Theresa King

Job Title President

Address P.O. Box 10888
Street

Phone 850-228-8940

Tallahassee FL 32302
City State Zip

Email fbt.king@gmail.com

Speaking: For Against Information

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

Representing FL State Building and Construction Trades Council

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)

20 APRIL 2017

Meeting Date

SB 534

Bill Number (if applicable)

Topic SB 534 - PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name KIMBERELY S. SMITH

Job Title _____

Address 523 WENDEL AVE

Phone 813-335-8694

Street

LITHIA

City

FL

State

33547

Zip

Email kimberely.smith@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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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)

4-20-17
Meeting Date

SB 534
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Belinda Riffenburg

Job Title _____

Address 4509 S. Grady Ave.
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 _____

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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4/20/17

Meeting Date

534

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Deputy Chief Lobbyist

Address 3930 Coconut Creek Parkway, Ste 200 Phone (954) 465-6811
Street

Coconut Creek FL 33016
City State Zip

Email cbowen@panwestflorida.com

Speaking: For Against Information

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

Representing Associated Builders and Contractors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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4-20-17

Meeting Date

SB 534

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Melissa Braswell

Job Title _____

Address 15786 Fishhawk Falls Dr.

Phone 813-375-2965

Street

Lithia

City

FL

State

33547

Zip

Email BLUG22@MSN.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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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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04/20/2017
Meeting Date

534
Bill Number (if applicable)

Topic PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name ROBERT CHAPMAN

Job Title STATE EMPLOYEE

Address 41219 LYNBROOK DRIVE
Street

Phone _____

ZEPHYRIUS FLORIDA 33540
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

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4-20-17

Meeting Date

SB 534

Bill Number (if applicable)

Topic SB 534

Amendment Barcode (if applicable)

Name JOHN GALL

Job Title _____

Address 13398 53RD CT. N.
Street

Phone 561 308-0339

WEST PALM BEACH
City

FL
State

33411
Zip

Email john.gall@prodigy.net

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

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4/20/17
Meeting Date

SB 534
Bill Number (if applicable)

Topic HOME RULE

Amendment Barcode (if applicable)

Name GAIL MARIE PERRY

Job Title CHAIR, COUNCIL OF FLORIDA

Address PO BOX 1766

Phone 954 850 4055

Street

POMPANO BEACH FLORIDA 33061

City

State

Zip

Email worship@netmail.com

Speaking: For Against Information

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

Representing COMMUNICATIONS WORKERS of AMERICA

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)

4.20.17

Meeting Date

SB 534

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Scott Launier

Job Title _____

Address 8608 Crossbay Drive

Phone 321-225-2080

Street

Orlando

FL

32829

Email scottlaunier@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing Private Citizen

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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4/20/17

Meeting Date

534

Bill Number (if applicable)

Topic PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name GLEND ABBOTT (PRONOUNCED ABBOTT)

Job Title _____

Address 4305 SW 98 AV

Phone 786-376-1181

Street

MIAMI

FL.

33165

Email GLEND.ABBOTT@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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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4-20-17

Meeting Date

SB 534

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Stephen Vanciel

Job Title _____

Address 2644 Camomile Dr

Phone _____

Street

Orlando

FL

32837

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)

4/19/17
Meeting Date

534
Bill Number (if applicable)

Topic Public Works

Amendment Barcode (if applicable)

Name ERIC POOLE

Job Title Asst. Leg Director

Address 100 Monroe St
Street
Tallahassee FL 32311
City State Zip

Phone 922 4300

Email _____

Speaking: For Against Information

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

Representing Florida 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.

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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)

4/20/2017

Meeting Date

SB 534

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Bruce Kershner

Job Title _____

Address 231 West Bay Ave.

Phone 407-830-1882

Street

Longwood

FL

32750

Email rbkershner@att.net

City

State

Zip

Speaking: For Against Information

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

Representing Northwest FL Section Associated General Contractors AL

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)

4/20/17
Meeting Date

SB-534
Bill Number (if applicable)

Topic PUBLIC WORKS

Amendment Barcode (if applicable)

Name J. B. CLARK

Job Title LOBBYIST

Address 2071 CYNTHIA DRIVE
Street

Phone 850-556-8143

TACCAHASSEE, FL 32303
City State Zip

Email JBCLARK5@EARTHLINK.NET

Speaking: For Against Information

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

Representing FLORIDA ELECTRICIAN WORKERS ASSN.

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)

4-20-17

Meeting Date

SB 534

Bill Number (if applicable)

Topic PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name WILLIAM LAWSON

Job Title _____

Address 20 SOUTH LAKEWOOD DR

Phone 305-298-0790

Street

ORLANDO

City

FL

State

32803

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)

4/20/17

Meeting Date

534

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Matthew Land

Job Title Political Director

Address 14 NE 1st Ave, Suite 1200

Phone 850.445.3428

Email m.land@selaborers.org

City

State

Zip

Speaking: For Against Information

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

Representing Southeast District of Laborers Union

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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4/20/17
Meeting Date

534
Bill Number (if applicable)

Topic Public Works

Amendment Barcode (if applicable)

Name Arthur Rosenberg

Job Title Attorney

Address 3000 Biscayne Blvd, #106

Phone 850-509-2085

Miami FL 33137
City State Zip

Email arthur@floridalegal.org

Speaking: For Against Information

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

Representing Florida Legal 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.

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4/20/17
Meeting Date

SB 534
Bill Number (if applicable)

Topic Public works

Amendment Barcode (if applicable)

Name Andy Madtes

Job Title Executive Director AFSCME FL

Address 3064 Highland Oaks Place
Street
Fallahassee, FL 32301
City State Zip

Phone 850-222-0842

Email amadtes@afscme.org

Speaking: For Against Information

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

Representing AFSCME 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.

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4/20/17

Meeting Date

534

Bill Number (if applicable)

Topic Public works projects

Amendment Barcode (if applicable)

Name Kari Hebrank

Job Title _____

Address 113 E college Ave. Suite 200

Phone 850-514-5193

Tallahassee
City

FL
State

Zip

Email _____

Speaking: For Against Information

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

Representing NUCA of 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.

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4-20-17

Meeting Date

SB 534

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Ellen Baker

Job Title _____

Address 5673 Whirlaway Rd.

Phone 561-801-0383

Street

Palm Beach Gardens, FL 33418

Email bakeret@hotmail.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)

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4/20/17

Meeting Date

SB 534

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Jim JUNECKO

Job Title _____

Address 441 33rd St. N. # 712

Phone 407-346-3525

Street

St. Petersburg, FL 33713

Email Jim.Junecko@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

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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4/20/17

Meeting Date

SB 534

Bill Number (if applicable)

Topic Public works

Amendment Barcode (if applicable)

Name Rich Templin

Job Title _____

Address 135 S. Monroe

Phone 850 - 224 - 6926

Street

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 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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S-001 (10/14/14)

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APPEARANCE RECORD

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4-20-17
Meeting Date

534
Bill Number (if applicable)

Topic Public Works

Amendment Barcode (if applicable)

Name Babara DeDonne

Job Title Ms

Address 625 E. Broadway St
Street

Phone 251-4380

Tallah FL 32808
City State Zip

Email babaradeonne1@gmail.com

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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4/20/2017

Meeting Date

SB 534

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Eddy Labrador

Job Title Director, Intergovt. Affairs

Address 115 S. Andrews Avenue, Room 426

Phone 954-826-1155

Street

Fort Lauderdale FL 33301

City

State

Zip

Email elabrador@broward.org

Speaking: For Against Information

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

Representing Broward 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.

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S-001 (10/14/14)

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APPEARANCE RECORD

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4/20/17

Meeting Date

534

Bill Number (if applicable)

Topic Preemption

Amendment Barcode (if applicable)

Name MARCUS DIXON

Job Title Political Director

Address 2881 Corporate Way

Phone 305-720-1627

Miramar FL 33027
City State Zip

Email Marcus.Dixon@seiufla.org

Speaking: For Against Information
AGAINST

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

4-20-17

Meeting Date

SB 534

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Rusnak

Job Title _____

Address 512 Cliff Drive

Phone 813-943-3972

Street

Temple Terrace FL 33617

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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4/20/17

Meeting Date

SB 534

Bill Number (if applicable)

Topic Public Works Project

Amendment Barcode (if applicable)

Name Jean Clements

Job Title _____

Address 3134 W. Coachman Av
Street

Phone (813)600-9759

Tampa FL 33611
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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APPEARANCE RECORD

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4/20/17

Meeting Date

SB 534

Bill Number (if applicable)

Topic Public Works Project

Amendment Barcode (if applicable)

Name Valerie Chuchman

Job Title _____

Address 708 W. Hiawatha St
Street

Phone 813-373-1611

Tampa, FL 33604
City State Zip

Email vchuchman@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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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 Appropriations

BILL: CS/CS/SB 554

INTRODUCER: Commerce and Tourism Committee; Regulated Industries Committee; and Senators Young and Latvala

SUBJECT: Craft Breweries

DATE: April 19, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Oxamendi	McSwain	RI	Fav/CS
2. Askey	McKay	CM	Fav/CS
3. Davis	Betta	AGG	Recommend: Favorable
4. Davis	Hansen	AP	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 554 authorizes a craft brewery with a retail vendor's license to sell, transport, and deliver its own beer from its brewery to other vendors. A craft brewery that distributes beer to a vendor is subject to the same restrictions as a licensed distributor (i.e., the brewer cannot give the vendor any financial assistance, such as a gift, loan, or rebate).

A craft brewery may self-distribute to a vendor only beer in kegs or similar containers that hold 5.16 gallons (i.e., a 1/6th keg), 7.75 gallons (i.e., a "pony keg") or 15.5 gallons (i.e., a keg). A craft brewery may not distribute its own beer to a vendor if it has a franchise agreement with a distributor to distribute its product anywhere in the state, or has a total production volume of more than 7,000 kegs (i.e., 108,500 gallons) of malt beverages a year.

Deliveries of beer to a vendor must be made in vehicles owned by the brewery or in a vehicle owned by a person required to be disclosed on the alcoholic beverage application.

The bill allows brew pubs to transfer beer to a restaurant, of common owner affiliation, which is a part of a restaurant group of not more than 15 restaurants.

The bill has no impact on state revenues or expenditures because any new costs will be paid from existing resources.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.³

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer. A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.

Generally, Florida has adopted the three-tier system. Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁴ Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.⁵ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.⁶

Tied House Evil Prohibitions

The three-tier system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.⁷ Section 561.42, F.S., regulates the permitted and prohibited relationships and interactions of manufacturers and distributors with vendors in order to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and to prevent a manufacturer or distributor from giving a vendor gifts, loans or property, or rebates. However, s. 561.423, F.S., permits a distributor of beer or malt beverages to provide in-store servicing of beer or malt beverages.

¹ Section 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² See s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

⁵ Section 561.22, F.S.

⁶ Sections 563.022(14) and 561.14(1), F.S.

⁷ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, (June 2004) available at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf (last visited February 13, 2017).

Three-Tier System Exceptions

Exceptions to the three-tier regulatory system permit in-state wineries,⁸ breweries,⁹ and craft distilleries to be licensed as a vendor and sell directly to consumers.¹⁰ Restaurants licensed as vendors (brew pubs) may manufacture a limited quantity of malt beverages and sell directly to consumers for consumption on the licensed premises of a restaurant.¹¹

Craft Breweries

Section 561.221(2), F.S., authorizes the division to issue a vendor's license to a manufacturer of malt beverages for the sale of alcoholic beverages on property consisting of a single complex that includes a brewery (craft brewery), which may be divided by no more than one public street or highway. A vendor license to a craft brewery is an exception to the three-tier system described in ss. 561.14 and 561.22, F.S., and to the tied-house evil restrictions in s. 561.42, F.S.

A craft brewery with multiple manufacturing licenses may transfer malt beverages that it produces between its breweries, as provided in s. 563.022(14)(d), F.S. Such transfers are limited to an amount equal to 100 percent of the yearly production of the receiving brewery.

All malt beverages and other alcoholic beverages that are not manufactured by the craft brewery must be obtained through a distributor, an importer, sales agent, or broker.

A craft brewery may not make deliveries as provided in s. 561.57(1), F.S., which permits a vendor to deliver products sold at the licensed place of business to an off-site location. Telephone or mail orders received at a vendor's licensed place of business are considered a sale actually made at the vendor's licensed place of business. However, deliveries made by a vendor away from his or her place of business may only be made in vehicles that are owned or leased by the licensee. By acceptance of an alcoholic beverage licensee, the vendor is presumed to have agreed to the inspection of the vehicle without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.¹²

The division may not issue more than eight vendor's licenses to a manufacturer of malt beverages.¹³

Come-to-Rest Requirement

Section 561.5101, F.S., requires, for purposes of inspection and tax-revenue control, all malt beverages to come to rest at the licensed premises of an alcoholic beverage wholesaler in this state before being sold to a vendor by the wholesaler. The come-to-rest requirement does not apply to malt beverages that a craft brewery manufacturers and sells to consumers as a vendor, or

⁸ See s. 561.221(1), F.S.

⁹ See s. 561.221(2), F.S.

¹⁰ See s. 565.03, F.S.

¹¹ See s. 561.221(3), F.S.

¹² Section 561.57(2), F.S.

¹³ Section 561.221(2)(e), F.S.

to malt beverages manufactured and sold by a brew pub. It is a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.,¹⁴ for any person in the business of selling alcoholic beverages to knowingly and intentionally sell malt beverages in a manner inconsistent with the come-to-rest requirement, whether the sale is to a vendor or to an ultimate consumer.

Excise Tax Reporting and Payment

Craft brewers are required to report and pay the excise tax on malt beverages imposed by s. 563.05, F.S. Manufacturers and distributors are required to compute and submit the applicable excise taxes on alcoholic beverages with the report required by s. 561.55, F.S., to the division, on or before the 10th of each month, for all beverages sold during the previous calendar month.¹⁵

III. Effect of Proposed Changes:

Section 1 amends s. 561.221, F.S., to authorize a craft brewery to sell, transport, and deliver (distribute) its own beer from its licensed premises to vendors.

A craft brewery that distributes beer to a vendor is subject to the same restrictions as a licensed distributor under ss. 561.42 and 561.423, F.S., (e.g., the brewer cannot give the vendor any financial assistance, such as a gift, loan, or rebate).

A craft brewery may distribute to a vendor only beer in kegs¹⁶ or similar containers that hold 5.16 gallons (i.e., a 1/6th keg), 7.75 gallons (i.e., a “pony keg”) or 15.5 gallons (i.e., a keg).

A craft brewery may not distribute to a vendor, if it:

- Has a franchise agreement with a distributor to distribute its product anywhere in the state; or
- Has a total production volume of more than 7,000 kegs (i.e., 108,500 gallons) of malt beverages a year.

Section 1 allows brew pubs to transfer beer to a restaurant, of common owner affiliation, which is a part of a restaurant group of not more than 15 restaurants.

Section 2 amends s. 561.5101, F.S., the come-to-rest requirement, to exempt certain deliveries made by a craft distillery to a vendor as provided in s. 561.221(2)(f), F.S.

Section 3 amends s. 561.57, F.S., to require a brewery to deliver beer to a vendor in a vehicle owned by the brewery or in a vehicle owned by a person required to be disclosed on the alcoholic beverage application,¹⁷ as provided in s. 561.57, F.S.

¹⁴ 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. Section 775.084, F.S., provides increased penalties for habitual offenders.

¹⁵ Section 561.50, F.S.

¹⁶ Section 561.221(3)(a)1., F.S. provides that a “keg” equals 15.5 gallons.

¹⁷ Section 561.17, F.S., requires that the alcoholic beverage license application include all persons, officers, shareholders, and directors of the applicant that have a direct or indirect interest in the business seeking to be licensed under the Beverage Law.

Section 4 amends s. 561.022, F.S., to provide that the Beverage Law does not prohibit a delivery from a brewery to a vendor's licensed premises as provided in s. 561.221(2)(f), F.S.

The effective date of the bill is July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the DBPR, modifications to the Electronic Data Submission (EDS) System will be necessary to implement this bill. The costs of such modification can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 561.221, 561.5101, 561.57, and 563.022.

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 Committee on March 27, 2017:

The committee substitute allows brew pubs to transfer beer to a restaurant, of common owner affiliation, which is a part of a restaurant group of not more than 15 restaurants.

CS by Regulated Industries Committee on February 22, 2017:

The committee substitute:

- Allows a craft brewery to distribute kegs or similar containers that hold 5.16 gallons (i.e., a 1/6th keg), 7.75 gallons (i.e., a “pony keg”) or 15.5 gallons (i.e., a keg), of malt beverages manufactured on its licensed premises; and
- Clarifies that the authority to distribute does not apply to a manufacturer who has a total production volume of more than 7,000 kegs, (i.e., 108,500 gallons) of malt beverages a year.

- B. **Amendments:**

None.

By the Committees on Commerce and Tourism; and Regulated Industries; and Senators Young and Latvala

577-02922-17

2017554c2

1 A bill to be entitled
 2 An act relating to craft breweries; amending s.
 3 561.221, F.S.; exempting certain vendors from
 4 specified delivery restrictions under certain
 5 circumstances; providing applicability; authorizing
 6 vendors licensed as manufacturers under ch. 561, F.S.,
 7 to transfer malt beverages to certain restaurants with
 8 common ownership affiliations; amending s. 561.5101,
 9 F.S.; revising applicability; amending s. 561.57,
 10 F.S.; providing that certain manufacturers may
 11 transport malt beverages in vehicles owned or leased
 12 by certain persons other than the manufacturers;
 13 amending s. 563.022, F.S.; conforming a provision to
 14 changes made by the act; providing an effective date.
 15
 16 Be It Enacted by the Legislature of the State of Florida:
 17
 18 Section 1. Paragraph (d) of subsection (2) of section
 19 561.221, Florida Statutes, is amended, paragraph (f) is added to
 20 that subsection, paragraph (a) of subsection (3) of that section
 21 is amended, and subsection (4) is added to that section, to
 22 read:
 23 561.221 Licensing of manufacturers and distributors as
 24 vendors and of vendors as manufacturers; conditions and
 25 limitations.—
 26 (2)
 27 (d) A manufacturer possessing a vendor's license under this
 28 subsection is not permitted to make deliveries under s.
 29 561.57(1), except as provided in paragraph (f).

Page 1 of 4

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

577-02922-17

2017554c2

30 (f) Notwithstanding any other provision of the Beverage
 31 Law, a manufacturer possessing a vendor's license under this
 32 subsection may sell, transport, and deliver to vendors, from the
 33 manufacturer's licensed premises, malt beverages that have been
 34 manufactured on its licensed premises if the manufacturer
 35 complies with the requirements in ss. 561.42 and 561.423, as
 36 applicable, to the same extent as if the manufacturer were a
 37 distributor.
 38 1. The authority provided in this paragraph is limited to
 39 the sale, transport, and delivery of kegs or similar containers
 40 that hold 5.16 gallons, 7.75 gallons, or 15.5 gallons.
 41 2. Any delivery under this paragraph is subject to the
 42 provisions of s. 561.57(2) related to deliveries by licensees.
 43 3. This paragraph does not apply to a manufacturer who:
 44 a. Has a franchise agreement with a distributor pursuant to
 45 s. 563.022; or
 46 b. Has a total production volume of more than 7,000 kegs of
 47 malt beverages a year.
 48 (3) (a) Notwithstanding other provisions of the Beverage
 49 Law, any vendor licensed in this state may be licensed as a
 50 manufacturer of malt beverages upon a finding by the division
 51 that:
 52 1. The vendor will be engaged in brewing malt beverages at
 53 a single location and in an amount which will not exceed 10,000
 54 kegs per year. For purposes of this section ~~subsection~~, the term
 55 "keg" means 15.5 gallons.
 56 2. The malt beverages so brewed will be sold to consumers
 57 for consumption on the vendor's licensed premises or on
 58 contiguous licensed premises owned by the vendor.

Page 2 of 4

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577-02922-17

2017554c2

59 (4) Notwithstanding any other provision of the Beverage
 60 Law, any vendor licensed as a manufacturer under this section
 61 may transfer malt beverages to any restaurant with which it has
 62 common ownership affiliations, which restaurant is part of a
 63 restaurant group that comprises not more than 15 restaurants.

64 Section 2. Subsection (1) of section 561.5101, Florida
 65 Statutes, is amended to read:

66 561.5101 Come-to-rest requirement; exceptions; penalties.—

67 (1) For purposes of inspection and tax-revenue control, all
 68 malt beverages, except those manufactured and sold by the same
 69 licensee, pursuant to s. 561.221(2) or (3), must come to rest at
 70 the licensed premises of an alcoholic beverage wholesaler in
 71 this state before being sold to a vendor by the wholesaler. The
 72 prohibition contained in this subsection does not apply to the
 73 shipment of malt beverages commonly known as private labels. The
 74 prohibition contained in this subsection shall not prevent a
 75 manufacturer from shipping malt beverages for storage at a
 76 bonded warehouse facility, provided that such malt beverages are
 77 distributed as provided in this subsection or to an out-of-state
 78 entity. The prohibition contained in this subsection does not
 79 apply to a manufacturer delivering alcoholic beverages to a
 80 licensed vendor as provided in s. 561.221(2)(f).

81 Section 3. Subsection (2) of section 561.57, Florida
 82 Statutes, is amended to read:

83 561.57 Deliveries by licensees.—

84 (2) Deliveries made by a manufacturer, distributor, or
 85 vendor away from his or her place of business may be made only
 86 in vehicles that ~~which~~ are owned or leased by the licensee.
 87 However, a manufacturer authorized to make deliveries under s.

Page 3 of 4

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577-02922-17

2017554c2

88 561.221(2)(f) to the licensed premises of a vendor may transport
 89 malt beverages if the vehicle used to transport the alcoholic
 90 beverages is owned or leased by the manufacturer or any person
 91 who has been disclosed on a license application filed by the
 92 manufacturer and approved by the division. By acceptance of an
 93 alcoholic beverage license and the use of such vehicles, the
 94 licensee agrees that such vehicle shall always be subject to be
 95 inspected and searched without a search warrant, for the purpose
 96 of ascertaining that all provisions of the alcoholic beverage
 97 laws are complied with, by authorized employees of the division
 98 and also by sheriffs, deputy sheriffs, and police officers
 99 during business hours or other times the vehicle is being used
 100 to transport or deliver alcoholic beverages.

101 Section 4. Paragraph (d) of subsection (14) of section
 102 563.022, Florida Statutes, is amended to read:

103 563.022 Relations between beer distributors and
 104 manufacturers.—

105 (14) MANUFACTURER; PROHIBITED INTERESTS.—

106 (d) Nothing in the Beverage Law shall be construed to
 107 prohibit a manufacturer from shipping products to or between its
 108 breweries, or between its breweries and the licensed premises of
 109 a vendor as provided in s. 561.221(2)(f), without a
 110 distributor's license.

111 Section 5. This act shall take effect July 1, 2017.

Page 4 of 4

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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)

4/20/17

Meeting Date

SB 554

Bill Number (if applicable)

Topic Craft Breweries

Amendment Barcode (if applicable)

Name Mitchell Rubin

Job Title Executive Director

Address 215 S. Monroe St. #340

Phone (850) 224-2337

Street

Tallahassee, FL 32301

City

State

Zip

Email Mitch@fbwa.com

Speaking: For Against Information

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

Representing Florida Beer Wholesalers Assn

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)

April 20, 2017
Meeting Date

554
Bill Number (if applicable)

Topic Craft Breweries

Amendment Barcode (if applicable)

Name Josh Aubuchon

Job Title General Counsel

Address 315 S. Calhoun
Street

Phone 224-7000

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 Brewers Guild

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)

SB 554
Bill Number (if applicable)

Meeting Date _____

Topic Beer - Self Distribution

Amendment Barcode (if applicable) _____

Name Eric Criss

Job Title President

Address 110 S. Monroe St.
Street

Phone 491 3903

Tallahassee FL 32309
City State Zip

Email eric@floridabeer.org

Speaking: For Against Information

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

Representing Beer Industry 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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SB 672

INTRODUCER: Senator Bean

SUBJECT: Certificates of Nonviable Birth

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stovall</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Loe</u>	<u>Hansen</u>	<u>AP</u>	Favorable

I. Summary:

SB 672 creates the “Grieving Families Act,” which enables a parent to obtain, in certain situations, a certificate of nonviable birth following a miscarriage. The bill defines a “nonviable birth” as an unintentional, spontaneous fetal demise that occurs after the completion of the 9th week of gestation but before the 20th week of gestation of a pregnancy. The pregnancy must have been verified by a health care practitioner.

When requested to do so by a parent, the Department of Health (DOH), Office of Vital Statistics, must register nonviable births based upon information submitted by certain health care practitioners and facilities. The DOH must then issue a certificate within 60 days of a parent’s properly submitted request. The person required to register a nonviable birth must advise a parent how to request the certificate of nonviable birth.

The bill prohibits using a certificate of nonviable birth in the calculation of live birth statistics.

The bill specifies that the provisions in this act may not be used as a basis to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a nonviable birth.

The bill has an indeterminate impact on state revenues and expenditures; however, any costs incurred by DOH will be absorbed within DOH’s existing resources.

The effective date of the bill is July 1, 2017.

II. Present Situation:

Vital Statistics

The Office of Vital Statistics,¹ housed within the DOH, is responsible for compiling, storing, and preserving the vital records of the state. Vital records² are the official certificates or reports of birth, death, fetal death, marriage, dissolution of marriage, certain name changes, and data related to these records.

Florida officially began collecting birth and death records in 1917. Two years later, in 1919, the state became a nationally recognized death registration jurisdiction. In 1924, the state became a nationally recognized birth registration jurisdiction. Since 1927, marriage and dissolution records have been filed with the Office of Vital Statistics.³ In addition to the state office, which operates under the direction of the state registrar, district offices operate under the direction of local registrars.

Birth Registration

A certificate for each live birth that occurs in this state must be filed within five days after the birth. The certificate may be filed with the local registrar of the district where the birth occurred or submitted electronically to the state registrar. Responsibility for filing the certificate is assigned to various persons depending upon where the birth occurs. For example, if the birth occurs in a hospital, birth center, or other health care facility, or in route thereto, the person in charge of the facility is responsible for filing the certificate. The health care practitioner in attendance is responsible for providing the facility with the information required by the birth certificate. If the birth occurs outside a facility and a physician, certified nurse midwife, midwife, or a public health nurse was in attendance, then that person must file the certificate.⁴

Death and Fetal Death Registration

A certificate for each death or fetal death⁵ that occurs in this state must be filed within five days after the death. The certificate may be filed with the local registrar of the district in which the death or fetal death occurred or submitted electronically to the state registrar.⁶

¹ The statutes consistently refer to the “Office” of Vital Statistics and not the “Bureau” of Vital Statistics. For example, see s. 382.003, F.S. While the statutes refer to an Office of Vital Statistics, the DOH has established this responsibility at the bureau level. See the DOH’s organizational chart available at: <http://www.floridahealth.gov/about-the-department-of-health/documents/orgchart.pdf>.

² Section 382.002(17), F.S.

³ Department of Health, Florida Vital Statistics Annual Report, August 2016, Page *vii*, <http://www.flpublichealth.com/VSBOOK/pdf/2015/Intro.pdf> (last visited March 16, 2017).

⁴ Section 382.013, F.S.

⁵ Section 382.002(8), F.S., defines “fetal death” as death prior to the complete expulsion or extraction of a product of human conception from its mother if the 20th week of gestation has been reached and the death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

⁶ Section 382.008(1), F.S.

Katherine's Law - Certificate of Birth Resulting in Stillbirth

In 2006, Florida's governor signed into law legislation that allows for the creation and issuance of a certificate of birth resulting in stillbirth.⁷ This law is known as Katherine's Law.⁸

The certificate of birth resulting in stillbirth is not proof of live birth⁹ and may not be used to establish identity.¹⁰ Gestation must be 20 weeks or more,¹¹ and there must be a fetal death certificate on file with the Bureau of Vital Statistics in order for a certificate to be prepared. The information included on the certificate comes from the fetal death certificate.

Miscarriage

Miscarriage is often described as the spontaneous loss of a pregnancy that occurs before the 20th week of gestation. Approximately 10 to 20 percent of all known pregnancies end in miscarriage. The number of miscarriages might actually be higher because some occur before a woman is aware that she is pregnant.¹²

Stephanie Saboor Grieving Parents Act

In 2003, the Legislature enacted the Stephanie Saboor Grieving Parents Act.¹³ The act applies to a physician, physician assistant, nurse, or midwife¹⁴ or a hospital, ambulatory surgical center, or birth center¹⁵ with custody of fetal remains following a spontaneous fetal demise that occurs after a gestation period of less than 20 completed weeks. Those persons or facilities are required to notify the mother of her option to arrange for the burial or cremation of the fetal remains, as well as the procedures provided by general law.^{16,17}

III. Effect of Proposed Changes:

Section 1 creates the “Grieving Families Act,” which enables a parent to obtain, in certain situations, a certificate of nonviable birth following a miscarriage.

Section 2 amends 382.002, F.S., to define a “nonviable birth” as an unintentional, spontaneous fetal demise that occurs after the completion of the 9th week of gestation but before the 20th week of gestation. The pregnancy must have been verified by a health care practitioner.

⁷ Section 382.002(16), F.S., defines “stillbirth” as an unintended, intrauterine fetal death after a gestational age of not less than 20 completed weeks.

⁸ Ch. 2006-118, Laws of Fla.

⁹ Section 382.0085(4)(e), F.S.

¹⁰ See <http://www.floridahealth.gov/certificates/certificates/birth/Stillbirth/index.html> (last visited March 16, 2017).

¹¹ Section 382.002(16), F.S.

¹² See for example, The Mayo Clinic, Miscarriage website at: <http://www.mayoclinic.org/diseases-conditions/pregnancy-loss-miscarriage/home/ovc-20213664>, (last visited on March 16, 2017).

¹³ Chapter 2003-52, L.O.F., codified at s. 383.33625, F.S.

¹⁴ See s. 383.33625(2), F.S., which requires a health care practitioner licensed pursuant to chapter 458, 459, 464, or 467, F.S., to provide the notification.

¹⁵ Section 383.33625(4), F.S., requires a facility licensed pursuant to chapter 383 or chapter 395, F.S., to provide the notification.

¹⁶ Section 383.33625(4), F.S.

¹⁷ Fetal remains of less than 20 completed weeks of gestation would be considered biomedical waste, which is governed by s. 381.0098, F.S.

Section 3 amends s. 382.008, F.S., to provide that a parent who experiences a nonviable birth may request a licensed nurse or licensed midwife who attends or diagnoses a nonviable birth, or a hospital, ambulatory surgical center, or birthing center at which a nonviable birth occurs, to electronically file or submit a form for a registration of nonviable birth. The health care practitioner or facility must electronically file or submit the form to the Office of Vital Statistics within 30 days after receipt of the request.

These health care practitioners or facilities must advise a parent who experiences a nonviable birth of the opportunity to request the preparation of a certificate of nonviable birth, how to contact the Office of Vital Statistics in order to obtain the certificate of nonviable birth, and that a copy of the original is available as a public record.

Section 5 creates s. 382.0086, F.S., to require the DOH to issue a certificate of nonviable birth within 60 days after receipt of a properly completed request from a parent named on the registration of nonviable birth. The provisions of this section closely follow the provisions for obtaining a certificate of birth resulting in stillbirth.¹⁸ This section requires the request for a certificate of nonviable birth to be on a form adopted by rule promulgated by the DOH, which includes the date of the nonviable birth and the county in which the nonviable birth occurred.

The certificate of nonviable birth must contain:

- The date of the nonviable birth.
- The county in which the nonviable birth occurred.
- The name of the fetus, as indicated on the registration of nonviable birth. If a name was not provided on the original or amended registration and the parent chooses not to provide a name, the certificate will use “baby boy,” “baby girl,” or “baby” if the sex is unknown, and the last name of the parents.
- A statement on the front of the certificate, which provides, “This certificate is not proof of a live birth.”

Only a parent named on the nonviable birth registration may request the Office of Vital Statistics to issue a certificate of nonviable birth. This request may be made at any time. This section provides that the Office of Vital Statistics may refuse to issue a certificate of nonviable birth to a person who is not a parent named on the nonviable birth registration. This refusal is final agency action and is not subject to review under chapter 120, F.S., the Administrative Procedures Act. However, once the certificate has been issued, any person may request a copy of that certificate pursuant to a public records request.

This section further provides:

- That the Office of Vital Statistics may not use a certificate of nonviable birth in the calculation of live birth statistics.
- That the provisions in this act may not be used as a basis to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a nonviable birth.

¹⁸ See s. 382.0085, F.S.

- Rulemaking authority for the DOH to prescribe the form, content, and process for issuance of a certificate of nonviable birth.

Section 6 amends s. 382.0255, F.S., to authorize the DOH to impose a fee of between \$3 and \$5 for processing and filing a new certificate of nonviable birth.

Section 7 provides that the effective date of the bill is July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A parent who requests the issuance of a certificate of nonviable birth will pay a fee of not less than \$3 or more than \$5.

The specified health care practitioners and health care facilities will incur an administrative expense related to informing patients who have experienced a nonviable birth about their option to request the preparation of a registration of nonviable birth, the issuance of a certificate of nonviable birth, and the information related to that process. An additional administrative expense will be incurred if a parent requests that the registration of nonviable birth be filed with the Office of Vital Statistics.

C. Government Sector Impact:

To the extent that the health care practitioners and health care facilities are governmental entities or engaged in governmental functions when responsibilities under the bill are triggered, these entities will experience similar administrative expenses as those in the private sector.

The DOH will experience an indeterminate positive fiscal impact from the assessment of a fee – between \$3 and \$5 – for the issuance of a certificate of nonviable birth. The

volume of requests by parents for a certification of nonviable births is unknown. The collection of fees established in the bill should offset additional administrative expenses incurred by the DOH for the implementation of the bill.

The DOH will need to develop a web-based nonviable birth module and develop forms for registration and certification of nonviable births and system and database changes. The cost for system development is estimated at \$50,000, which would be a nonrecurring expenditure and absorbed within existing resources of the DOH.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 674 creates an exemption from the public records law for information relating to the cause of death and the parentage, marital status, and medical information in all nonviable birth records, except for health research purposes. The bills are linked and SB 674, if enacted, will take effect when this bill, or similar legislation, becomes a law.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 382.002, 382.008, 382.0085, and 382.0255.

This bill creates section 382.0086 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

¹⁹ Department of Health, House Bill 101 Fiscal Analysis (Jan. 9, 2017) (on file with the Senate Committee on Judiciary.)

By Senator Bean

4-00514A-17

2017672__

1 A bill to be entitled
 2 An act relating to certificates of nonviable birth;
 3 creating the "Grieving Families Act"; amending s.
 4 382.002, F.S.; providing a definition; amending s.
 5 382.008, F.S.; authorizing the State Registrar of the
 6 Office of Vital Statistics of the Department of Health
 7 to electronically receive a certificate of nonviable
 8 birth; requiring certain health care practitioners and
 9 health care facilities to electronically file a
 10 registration of nonviable birth within a specified
 11 timeframe; amending s. 382.0085, F.S.; conforming a
 12 cross-reference; creating s. 382.0086, F.S.; requiring
 13 the Department of Health to issue a certificate of
 14 nonviable birth within a specified timeframe upon the
 15 request of a parent; requiring the person registering
 16 the nonviable birth to advise the parent that a
 17 certificate of nonviable birth is available and that
 18 the certificate of nonviable birth is a public record;
 19 requiring the request for a certificate of nonviable
 20 birth to be on a form prescribed by the department and
 21 to include certain information; providing requirements
 22 for the certificate of nonviable birth; authorizing a
 23 parent to request a certificate of nonviable birth
 24 regardless of the date on which the nonviable birth
 25 occurred; designating the refusal to issue a
 26 certificate of nonviable birth to certain persons as
 27 final agency action that is not subject to
 28 administrative review; prohibiting the use of
 29 certificates of nonviable birth to calculate live
 30 birth statistics; prohibiting specified provisions
 31 from being used in certain civil actions; authorizing
 32 the department to adopt rules; amending s. 382.0255,

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33 F.S.; authorizing the department to collect fees for
 34 processing and filing a new certificate of nonviable
 35 birth; providing an effective date.
 36

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

38
 39 Section 1. This act may be cited as the "Grieving Families
 40 Act."

41 Section 2. Subsections (14) through (18) of section
 42 382.002, Florida Statutes, are renumbered as subsections (15)
 43 through (19), respectively, and a new subsection (14) is added
 44 to that section, to read:

45 382.002 Definitions.—As used in this chapter, the term:
 46 (14) "Nonviable birth" means an unintentional, spontaneous
 47 fetal demise occurring after the completion of the 9th week of
 48 gestation but prior to the 20th week of gestation of a pregnancy
 49 that has been verified by a health care practitioner.

50 Section 3. Section 382.008, Florida Statutes, is amended to
 51 read:

52 382.008 Death, ~~and~~ fetal death, and nonviable birth
 53 registration.—

54 (1) A certificate for each death and fetal death which
 55 occurs in this state shall be filed electronically on the
 56 department electronic death registration system or on a form
 57 prescribed by the department with the department or local
 58 registrar of the district in which the death occurred within 5
 59 days after such death and prior to final disposition, and shall
 60 be registered by the department if it has been completed and
 61 filed in accordance with this chapter or adopted rules. The

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62 certificate shall include the decedent's social security number,
63 if available. In addition, each certificate of death or fetal
64 death:

65 (a) If requested by the informant, shall include aliases or
66 "also known as" (AKA) names of a decedent in addition to the
67 decedent's name of record. Aliases shall be entered on the face
68 of the death certificate in the space provided for name if there
69 is sufficient space;

70 (b) If the place of death is unknown, shall be registered
71 in the registration district in which the dead body or fetus is
72 found within 5 days after such occurrence; and

73 (c) If death occurs in a moving conveyance, shall be
74 registered in the registration district in which the dead body
75 was first removed from such conveyance.

76 (2) (a) The funeral director who first assumes custody of a
77 dead body or fetus shall file the certificate of death or fetal
78 death. In the absence of the funeral director, the physician or
79 other person in attendance at or after the death or the district
80 medical examiner of the county in which the death occurred or
81 the body was found shall file the certificate of death or fetal
82 death. The person who files the certificate shall obtain
83 personal data from a legally authorized person as described in
84 s. 497.005 or the best qualified person or source available. The
85 medical certification of cause of death shall be furnished to
86 the funeral director, either in person or via certified mail or
87 electronic transfer, by the physician or medical examiner
88 responsible for furnishing such information. For fetal deaths,
89 the physician, midwife, or hospital administrator shall provide
90 any medical or health information to the funeral director within

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91 72 hours after expulsion or extraction.

92 (b) The State Registrar may receive electronically a
93 certificate of death, ~~or~~ fetal death, or nonviable birth which
94 is required to be filed with the registrar under this chapter
95 through facsimile or other electronic transfer for the purpose
96 of filing the certificate. The receipt of a certificate of
97 death, ~~or~~ fetal death, or nonviable birth by electronic transfer
98 constitutes delivery to the State Registrar as required by law.

99 (3) Within 72 hours after receipt of a death or fetal death
100 certificate from the funeral director, the medical certification
101 of cause of death shall be completed and made available to the
102 funeral director by the decedent's primary or attending
103 physician or, if s. 382.011 applies, the district medical
104 examiner of the county in which the death occurred or the body
105 was found. The primary or attending physician or medical
106 examiner shall certify over his or her signature the cause of
107 death to the best of his or her knowledge and belief. As used in
108 this section, the term "primary or attending physician" means a
109 physician who treated the decedent through examination, medical
110 advice, or medication during the 12 months preceding the date of
111 death.

112 (a) The department may grant the funeral director an
113 extension of time upon a good and sufficient showing of any of
114 the following conditions:

- 115 1. An autopsy is pending.
- 116 2. Toxicology, laboratory, or other diagnostic reports have
117 not been completed.
- 118 3. The identity of the decedent is unknown and further
119 investigation or identification is required.

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120 (b) If the decedent's primary or attending physician or
 121 district medical examiner of the county in which the death
 122 occurred or the body was found indicates that he or she will
 123 sign and complete the medical certification of cause of death
 124 but will not be available until after the 5-day registration
 125 deadline, the local registrar may grant an extension of 5 days.
 126 If a further extension is required, the funeral director must
 127 provide written justification to the registrar.

128 (4) If the department or local registrar grants an
 129 extension of time to provide the medical certification of cause
 130 of death, the funeral director shall file a temporary
 131 certificate of death or fetal death which shall contain all
 132 available information, including the fact that the cause of
 133 death is pending. The decedent's primary or attending physician
 134 or the district medical examiner of the county in which the
 135 death occurred or the body was found shall provide an estimated
 136 date for completion of the permanent certificate.

137 (5) A permanent certificate of death or fetal death,
 138 containing the cause of death and any other information that was
 139 previously unavailable, shall be registered as a replacement for
 140 the temporary certificate. The permanent certificate may also
 141 include corrected information if the items being corrected are
 142 noted on the back of the certificate and dated and signed by the
 143 funeral director, physician, or district medical examiner of the
 144 county in which the death occurred or the body was found, as
 145 appropriate.

146 (6) The original certificate of death or fetal death shall
 147 contain all the information required by the department for
 148 legal, social, and health research purposes. All information

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149 relating to cause of death in all death and fetal death records
 150 and the parentage, marital status, and medical information
 151 included in all fetal death records of this state are
 152 confidential and exempt from the provisions of s. 119.07(1),
 153 except for health research purposes as approved by the
 154 department; nor may copies of the same be issued except as
 155 provided in s. 382.025.

156 (7) Upon the request of a parent who experiences a
 157 nonviable birth, a health care practitioner licensed pursuant to
 158 chapter 464 or chapter 467 who attends or diagnoses a nonviable
 159 birth, or a health care facility licensed pursuant to chapter
 160 383 or chapter 395 at which a nonviable birth occurs, shall
 161 electronically file a registration of nonviable birth on the
 162 department electronic death registration system or on a form
 163 prescribed by the department with the department or local
 164 registrar of the district in which the nonviable birth occurred
 165 within 30 days after receipt of such request and shall be
 166 registered with the department if it has been completed and
 167 filed in accordance with this chapter or adopted rules.

168 Section 4. Subsection (9) of section 382.0085, Florida
 169 Statutes, is amended to read:

170 382.0085 Stillbirth registration.—

171 (9) This section or s. ~~382.002(17)~~ ~~382.002(16)~~ may not be
 172 used to establish, bring, or support a civil cause of action
 173 seeking damages against any person or entity for bodily injury,
 174 personal injury, or wrongful death for a stillbirth.

175 Section 5. Section 382.0086, Florida Statutes, is created
 176 to read:

177 382.0086 Certificate of nonviable birth.—

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178 (1) For any nonviable birth occurring in this state, the
 179 department shall issue a certificate of nonviable birth within
 180 60 days upon the request of a parent named on the registration
 181 of nonviable birth.

182 (2) The person who is required to register a nonviable
 183 birth under this chapter shall advise a parent who experiences a
 184 nonviable birth:

185 (a) That the parent may request the preparation of a
 186 certificate of nonviable birth.

187 (b) That the parent may obtain a certificate of nonviable
 188 birth by contacting the Office of Vital Statistics.

189 (c) How the parent may contact the Office of Vital
 190 Statistics to request a certificate of nonviable birth.

191 (d) That a copy of the original certificate of nonviable
 192 birth is available as a public record when held by an agency as
 193 defined in s. 119.011(2).

194 (3) The request for a certificate of nonviable birth must
 195 be on a form prescribed by department rule and include the date
 196 of the nonviable birth and the county in which the nonviable
 197 birth occurred.

198 (4) The certificate of nonviable birth must contain all of
 199 the following:

200 (a) The date of the nonviable birth.

201 (b) The county in which the nonviable birth occurred.

202 (c) The name of the fetus, as provided on the registration
 203 of nonviable birth pursuant to s. 382.008. If a name does not
 204 appear on the original or amended registration of nonviable
 205 birth and the requesting parent does not wish to provide a name,
 206 the Office of Vital Statistics shall fill in the certificate of

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207 nonviable birth with the name "baby boy" or "baby girl" and the
 208 last name of the parents as provided in s. 382.013(3). If the
 209 sex of the child is unknown, the Office of Vital Statistics
 210 shall fill in the certificate of nonviable birth with the name
 211 "baby" and the last name of the parents as provided in s.
 212 382.013(3).

213 (d) The following statement, which must appear on the front
 214 of the certificate: "This certificate is not proof of a live
 215 birth."

216 (5) A certificate of nonviable birth shall be a public
 217 record when held by an agency as defined in s. 119.011(2). The
 218 Office of Vital Statistics must inform any parent who requests a
 219 certificate of nonviable birth that a copy of the original
 220 certificate of nonviable birth is available as a public record.

221 (6) A parent may request that the Office of Vital
 222 Statistics issue a certificate of nonviable birth regardless of
 223 the date on which the nonviable birth occurred.

224 (7) It is final agency action, not subject to review under
 225 chapter 120, for the Office of Vital Statistics to refuse to
 226 issue a certificate of nonviable birth to a person who is not a
 227 parent named on the nonviable birth registration.

228 (8) The Office of Vital Statistics may not use a
 229 certificate of nonviable birth in the calculation of live birth
 230 statistics.

231 (9) This section or s. 382.002(14) may not be used as a
 232 basis to establish, bring, or support a civil cause of action
 233 seeking damages against any person or entity for bodily injury,
 234 personal injury, or wrongful death for a nonviable birth.

235 (10) The department shall prescribe by rule the form,

Page 8 of 9

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4-00514A-17

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236 content, and process for issuance of a certificate of nonviable
237 birth.

238 Section 6. Paragraph (k) is added to subsection (1) of
239 section 382.0255, Florida Statutes, to read:

240 382.0255 Fees.—

241 (1) The department is entitled to fees, as follows:

242 (k) Not less than \$3 or more than \$5 for processing and
243 filing a new certificate of nonviable birth pursuant to s.
244 382.0086.

245 Section 7. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 23, 2017

I respectfully request that **Senate Bill # 672**, relating to Certificates of Nonviable Birth, be placed on the:

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

A handwritten signature in blue ink 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)

4/20/17
Meeting Date

SB 672
Bill Number (if applicable)

Topic NON-VIABLE BIRTH CERTIFICATES

Amendment Barcode (if applicable)

Name MARIA VAQUERO

Job Title STATE PUBLIC DIRECTOR

Address 8235 NE 2ND AVE
Street

Phone 786 442 8199

MIAMI FL 33137
City State Zip

Email CHARO@LATINAINSTITUTE.ORG

Speaking: For Against Information

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

Representing FLORIDA LATINA ADVOCACY 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.

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)

4-25-17
Meeting Date

672
Bill Number (if applicable)

Topic Honorable Birth Certificate

Amendment Barcode (if applicable)

Name Barbara Deane

Job Title Ms

Address 625 E Bernard St

Phone 257-4280

City Tall State FL Zip 32308

Email barbaradeane1@yahoo.com

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)

4/20/17

Meeting Date

672

Bill Number (if applicable)

Topic Certificate Nonviable Birth

Amendment Barcode (if applicable)

Name Victoria Zepp

Job Title

Address 121 N. Monroe St. 9607

Phone 850/241-6309

City State Zip

Email VICTORIA@CLARITY-1.com

Speaking: For Against Information

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

Representing Tenet Health Care

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 Appropriations

BILL: CS/CS/SB 674

INTRODUCER: Governmental Oversight and Accountability Committee; Health Policy Committee; and Senator Bean

SUBJECT: Public Records/Nonviable Birth Records

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stovall</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Loe</u>	<u>Hansen</u>	<u>AP</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 674 makes information relating to the cause of death and the parentage of the fetus, the parents' marital status, and medical information in all nonviable birth records confidential and exempt from public inspection and copying. The bill permits the Department of Health to provide copies of certificates of nonviable birth to parents, to government agencies, and pursuant to a court order.

The bill includes a constitutionally required public necessity statement. The exemption will stand repealed on October 2, 2022, pursuant to the Open Government Sunset Review Act, unless it is reenacted by the Legislature.

The bill requires a two-thirds vote from each chamber for passage.

The bill has no impact on state revenues and expenditures.

The bill takes effect on July 1, 2017, contingent upon SB 672, or similar legislation, becoming a law.

II. Present Situation:

Public Records Law

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

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that:

It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

exemption that does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR 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.¹⁷ 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 if:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is 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.²³

Death and Fetal Death Certificates

Section 382.008, F.S., requires that a death certificate and fetal death certificate must be filed with the department or local registrar. Such a certificate must include specified information, such as the decedent's social security number, name, place of death, and cause of death. In addition, the original death certificate or fetal death certificate "shall contain all information required by the department for legal, social and health research purposes."²⁴

Copies of Death and Fetal Death Certificates and Public Records Exemptions

Certified copies of death records and fetal death certificates are subject to public records exemptions. The department may issue certified copies of death and fetal death certificates, which exclude confidential and exempt information, to anyone who requests a certified copy and pays the appropriate fee.²⁵ Information related to the cause of death is confidential and exempt for all death and fetal death records.²⁶ In addition, parentage, marital status, and medical information are confidential and exempt in fetal death records.²⁷

The department may issue certified copies of certificates of death or fetal death that include confidential and exempt information to certain family members and government agencies.²⁸ All of the information on a death certificate become public after 50 years.²⁹

The department may provide confidential and exempt information, vital records, or data to government agencies for specified purposes, such as statistical analysis, or to a research entity, if the department reviews the research protocols. Records or data submitted to government agencies or research entities are exempt from public disclosure.³⁰

-
3. What is the identifiable public purpose or goal of the exemption?
 4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
 5. Is the record or meeting protected by another exemption?
 6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST. Art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Section 382.008(6), F.S.

²⁵ Section 382.025(2)(a), F.S.

²⁶ Section 382.008(6), F.S.

²⁷ *Id.*

²⁸ Section 382.025(2)(a), F.S.

²⁹ Section 382.025(2)(b), F.S.

³⁰ Section 382.025(3), F.S.

Nonviable Birth Records

SB 672 (2017) creates the “Grieving Families Act,” which enables a parent to obtain, in certain situations, a certificate of nonviable birth following a miscarriage. The bill defines a “nonviable birth” as an unintentional, spontaneous fetal demise occurring after the completion of the 9th week of gestation but prior to the 20th week of gestation of a pregnancy that has been verified by a health care practitioner.

In response to a parent’s request, certain health care practitioners and facilities must submit information, as determined by rule by the Department of Health, Bureau of Vital Statistics (BVS), to the BVS in order to register a nonviable birth. This information will be used to issue a certificate of nonviable birth upon the parent’s request. Only a parent named on the nonviable birth registration may request the BVS to issue a certificate of nonviable birth. However, once the certificate has been issued, any person may request a copy of that certificate pursuant to a public records request.

The certificate of nonviable birth must contain:

- The date of the nonviable birth.
- The county in which the nonviable birth occurred.
- The name of the fetus, as indicated on the registration of nonviable birth. If a name was not provided on the original or amended registration and the parent chooses not to provide a name, the certificate will use “baby boy,” “baby girl,” or “baby” if the sex is unknown, and the last name of the parents.
- A statement on the front of the certificate: “This certificate is not proof of a live birth.”

III. Effect of Proposed Changes:

The bill provides that an original certificate of nonviable birth must contain all of the information required by the department for legal, social and health research purposes. This is the same information that the department collects for death certificates and fetal death certificates.³¹

The bill makes the cause of death and the parentage of the fetus, marital status of each parent, and all medical information in all nonviable birth records confidential and exempt from public inspection and copying.

The department may issue copies of a certificate of nonviable birth to the parents, to government entities for official purposes, and upon a court order. A parent, government entity, or court may request a copy of a certificate of nonviable birth that has the confidential and exempt information printed on the document. In the alternative, a parent, government entity, or court may purchase a certificate that does not contain the confidential and exempt information on its face. This provision is similar to current law which allows certain family members to have a copy of a death certificate with the cause of death documented on the certificate, and allows any member of the public (including the family) to order a copy of a death certificate without the cause of death on the face of the document.³²

³¹ Section 382.008(6), F.S.

³² Section 382.025(2), F.S.

The exemption will stand repealed on October 2, 2022, pursuant to the OGSR, unless it is reenacted by the Legislature.

The bill includes a constitutionally required public necessity statement. The public necessity statement provides that the exemption is needed to protect the privacy rights of a woman who experiences a nonviable birth. Furthermore, the public disclosure of such information may discourage a woman from seeking medical care from a licensed health care practitioner or health care facility.

The bill takes effect on July 1, 2017, contingent upon SB 672, or similar legislation, becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for public records exemptions to pass.

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement provides that the exemption is needed to protect sensitive personal information. Furthermore, the public disclosure of such information may discourage a parent from obtaining a certificate of nonviable birth if the public records exemption were not in place.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be “no broader than necessary to accomplish the stated purpose of the law.” The bill appears to meet this standard.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has no impact on state revenues and expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The underlying substantive bill, SB 672, may have to be amended so that these linked bills align with respect to section numbers and content.

VIII. Statutes Affected:

This bill substantially amends section 382.008 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 Governmental Oversight and Accountability on March 27, 2017:

The CS/CS does the following:

- Authorizes the department to collect information for legal, social, and health research purposes;
- Authorizes the department to put legal, social, and health research information on certificates of nonviable birth;
- Makes the names of the parents confidential and exempt;
- Clarifies and limits who may receive a redacted copy of a certificate for nonviable birth; and
- Modifies the public necessity statement.

CS by Health Policy on March 14, 2017:

The bill number of the linked substantive bill was inserted into the effective date.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability;
and Health Policy; and Senator Bean

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1 A bill to be entitled
2 An act relating to public records; amending s.
3 382.008, F.S.; providing that a certificate of
4 nonviable birth must contain information as required
5 by the Department of Health; authorizing the
6 department to issue a certified copy of a certificate
7 of nonviable birth to specified persons; providing
8 that certain information included in nonviable birth
9 records is confidential and exempt from public records
10 requirements; requiring the department to authorize
11 the issuance of a certified copy of a certificate of
12 nonviable birth subject to certain conditions;
13 providing for future legislative review and repeal of
14 the exemption; providing a statement of public
15 necessity; providing a contingent effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Subsection (7) is added to section 382.008,
20 Florida Statutes, to read:

21 382.008 Death, ~~and fetal death,~~ and nonviable birth
22 registration; exemption.—

23 (7) (a) An original certificate of nonviable birth shall
24 contain all information required by the department for legal,
25 social, and health research purposes. The department may issue a
26 certified copy of an original certificate of nonviable birth
27 containing confidential and exempt information to:

28 1. The fetus' parents;

29 2. An agency of the state or local government or the

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30 Federal Government for official purposes upon approval of the
31 department; or

32 3. Any person authorized to receive the certified copy upon
33 an order of any court of competent jurisdiction.

34 (b) All information relating to the cause of death of the
35 nonviable fetus, parentage of the fetus, marital status of each
36 parent, and any medical information included in all nonviable
37 birth records of this state are confidential and exempt from the
38 provisions of s. 119.07(1), and s. 24(a), Art. I of the State
39 Constitution, except for such information released for health
40 research purposes as approved by the department.

41 (c) The department must issue a certified copy of a
42 certificate of nonviable birth, excluding the portion containing
43 information that is confidential and exempt from s. 119.07(1)
44 and s. 24(a) Art. I of the State Constitution, as provided in
45 paragraph (b), to any person authorized by paragraph (a) to
46 receive it who requests a certified copy upon receipt of the
47 request and payment of the fee specified in s. 382.0255.

48 (d) This subsection is subject to the Open Government
49 Sunset Review Act in accordance with s. 119.15 and shall stand
50 repealed on October 2, 2022, unless reviewed and saved from
51 repeal.

52 Section 2. The Legislature finds that it is a public
53 necessity that the cause of death and parentage of the fetus,
54 marital status of the parents, and medical information included
55 in nonviable birth records be held confidential and exempt from
56 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
57 State Constitution to protect the privacy rights of a parent who
58 experiences a nonviable birth. Medical information and the cause

Page 2 of 3

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59 of death of the fetus is sensitive and personal in nature and
60 the public disclosure of such information may lead to an
61 unwarranted invasion into the lives of parents experiencing a
62 nonviable birth. The public disclosure of information regarding
63 the parentage of the fetus and marital status of the parents may
64 discourage individuals from requesting a certificate of
65 nonviable birth because of an actual or perceived stigma
66 regarding the nonviability of the fetus, the fetus' parentage,
67 or the parents' marital status. Currently, such information is
68 confidential and exempt from public disclosure in death and
69 fetal death records. The Legislature further finds that the same
70 protections should be afforded to parents who wish to
71 memorialize a nonviable birth with a certificate of nonviable
72 birth as part of their grieving process.

73 Section 3. This act shall take effect on the same date that
74 SB 672 or similar legislation takes effect, if such legislation
75 is adopted in the same legislative session or an extension
76 thereof and becomes a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/CS/SB 682 (219746)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Stargel

SUBJECT: Medicaid Managed Care

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Forbes</u>	<u>Williams</u>	<u>AHS</u>	<u>Recommend: Fav/CS</u>
3.	<u>Forbes</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 682 exempts from the Long-Term Care component (LTC) of the Statewide Medicaid Managed Care (SMMC) program those Medicaid recipients who have resided in a nursing facility for 60 or more consecutive days, with certain exceptions. The bill also exempts those recipients in the LTC component who are receiving hospice care while residing in a nursing facility. These recipients would receive long-term care services through fee-for-service Medicaid providers and other medical services through the managed medical assistance component (MMA) of the SMMC program. This section of the bill is effective October 1, 2018.

The bill provides that a nursing home resident will not be exempt from the LTC component if the resident has been identified as a candidate for home and community-based services (HCBS) by specified individuals. The agency must confirm whether an individual has been identified as a candidate for HCBS before determining that a person is exempt from the LTC component. The bill provides notice provisions should the nursing home resident later be identified as a candidate for HCBS services. The additional exceptions apply to a Medicaid recipient who is aged 18 or older and eligible for Medicaid due to a disability or a person who has priority enrollment for home and community-based services.

Effective July 1, 2017, the bill requires the Agency for Health Care Administration (AHCA) to impose fines and authorizes other sanctions for willful violations with the prompt pay provisions of section 641.315, 641.3155, 641.513, and 409.982(5), Florida Statutes.

Managed care plans must also contract with all nursing homes and hospices that meet credentialing and re-credentialing requirements as specified in the plan's contract with the AHCA for the first 12 months following a procurement in any regions where a plan is awarded a contract and that region was not previously served by that plan during the most recent procurement period. If a plan excludes a nursing home or hospice for the remainder of the contract period, the AHCA must require the plan to submit the performance and quality criteria that was used to exclude the provider and to demonstrate how the provider failed to meet the plan's criteria.

The AHCA believes that if nursing facility residents who meet specified criteria are exempted from the LTC program, costs will increase by an estimated \$200 million per year. The Florida Health Care Association disagrees with the AHCA assessment and believes this change will save the state a total of \$67.8 million a year.

Except as otherwise provided, the bill is effective upon becoming law.

II. Present Situation:

Florida Medicaid

The Medicaid program is a partnership between the federal and state governments to provide medical care to low income children and disabled persons. Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services (CMS). The state plan outlines Medicaid eligibility standards, policies, and reimbursement methodologies.

Florida Medicaid serves as the safety net to Florida's health care delivery system. Medicaid currently is the second largest expenditure in Florida's budget behind education with estimated expenditures for the 2016-2017 state fiscal year of \$25.8 billion¹ and covers 20 percent of all Floridians. Over 4 million Floridians are currently enrolled in Medicaid, including:

- 47 percent of Florida's children;
- 63 percent of Florida's births; and
- 61 percent of Florida's nursing home days.²

However, Florida Medicaid does not cover all low-income Floridians. The maximum income limits for programs are illustrated below as a percentage of the federal poverty level (FPL).

¹ Office of Economic and Demographic Research, Social Services Estimating Conference, Medicaid Caseload and Expenditures (February 17, February 27, and March 9, 2017) Executive Summary, <http://edr.state.fl.us/Content/conferences/medicaid/execsummary.pdf> (last visited Mar. 21, 2017).

² Agency for Health Care Admin., Senate Health and Human Services Appropriations Committee Presentation, *Agency for Health Care Administration - Florida Medicaid* (January 11, 2017), slide 2, http://www.flsenate.gov/PublishedContent/Committees/2016-2018/AHS/MeetingRecords/MeetingPacket_3554.pdf (last visited Mar. 17, 2017).

Florida’s Current Medicaid and CHIP Eligibility Levels in Florida ³ (With Income Disregards and Modified Adjusted Gross Income)						
Children’s Medicaid			CHIP (Kidcare)	Pregnant Women	Parents	Childless Adults
Age 0-1	Age 1-5	Age 6-18	Ages 0-18			
206% FPL	140% FPL	133% FPL	210% FPL	191% FPL	31% FPL	0% FPL

Florida Medicaid is administered by the AHCA and is financed with federal and state funds. The Department of Children and Families (DCF) determines Medicaid eligibility and transmits that information to the AHCA. As the single state agency for Medicaid, the AHCA has the lead responsibility for the overall program.⁴

The structures of state Medicaid programs vary from state to state, and each state’s share of expenditures varies and is largely determined by the federal government. Federal law and regulations set the minimum amount, scope, and duration of services offered in the program, among other requirements. State Medicaid benefits are provided in statute under s. 409.903, F.S. (Mandatory Payments for Eligible Persons) and s. 409.904, F.S. (Optional Payments for Eligible Persons).

Applicants for Medicaid must be United States citizens or qualified noncitizens, must be Florida residents, and must provide social security numbers for data matching. While self-attestation is permitted for a number of data elements on the application, most components are matched through the Federal Data Services Hub.⁵ Applicants must also agree to cooperate with Child Support Enforcement during the application process.⁶

Minimum eligibility coverage thresholds are established in federal law for certain population groups, such as children, as well as minimum benefits and maximum cost sharing. The minimum benefits include items such as physician services, hospital services, home health services, and family planning.⁷ States can add benefits, pending federal approval. Florida has added benefits, including prescription drugs, adult dental services, and dialysis.⁸ For children under age 21, the benefits must include the Early and Periodic Screening, Diagnostic and Treatment services, which are those health care and diagnostic services and treatment and measures that may be needed to correct or ameliorate defects or physical and mental illnesses and conditions discovered by screening services, consistent with federal law.⁹

Waivers to the state plan may be requested and negotiated by the state through the federal Centers for Medicare and Medicaid Services (CMS) by the AHCA. Florida has several such Medicaid waivers, including one, which implemented the SMMC program. Current federal law requires the state to obtain a waiver to implement managed care. Through these waivers, the

³ U.S. Centers for Medicare and Medicaid Services, Medicaid.gov, *Florida*, <http://www.medicaid.gov/medicaid-chip-program-information/by-state/florida.html> (last visited Mar. 17, 2017).

⁴ See s. 409.963, F.S.

⁵ Florida Dep’t of Children and Families, *Family-Related Medicaid Programs Fact Sheet*, p. 4 (April 2016) <http://www.dcf.state.fl.us/programs/access/docs/Family-RelatedMedicaidFactSheet.pdf> (last visited Mar. 21, 2017).

⁶ Id.

⁷ Section 409.905, F.S.

⁸ Section 409.906, F.S.

⁹ See Section 1905 9(r) of the Social Security Act.

states have limited flexibility to design their Medicaid programs; however, even within waiver authorities, federal regulations prescribe requirements for benefits, delivery systems, cost sharing limitations, and population coverages.

Statewide Medicaid Managed Care (SMMC)

The SMMC program is designed for the AHCA to issue invitations to negotiate and competitively procure contracts with managed care plans in 11 regions of the state to provide comprehensive Medicaid coverage for most of the state’s enrollees in the Medicaid program. The SMMC has two components: managed medical assistance (MMA) and long-term care managed care (LTC). The MMA waiver expires on June 30, 2017, and the LTC waiver was recently extended through December 27, 2021.¹⁰

Part IV of ch. 409, F.S., was created in 2011 by ch. 2011-134, L.O.F., and governs the SMMC program. The LTC component began enrollment in August 2013 and completed its statewide rollout in March 2014. The MMA component began enrolling Medicaid recipients in May 2014 and finished its rollout in August 2014.

Services are delivered through six managed care plans, which vary, based on the recipient’s region; however, each region has at least two plans. Plans are paid on a capitated basis meaning that a LTC plan must pay for all covered services under the contract regardless of whether the capitated rate covers the cost of services for that recipient. For nursing facilities and hospices, the plans are required to pay those designated providers at a rate set by the AHCA.

Of those recipients enrolled in the LTC waiver, 47,646 recipients are receiving home and community based services (HCBS) as of March 1, 2017. The remaining enrollees are receiving nursing facility services.¹¹

Statewide Medicaid Managed Care - February 1, 2017			
Component	Enrollment Start Date	Budget¹²	Enrollment (as of Mar. 2017)
Long-Term Care Plan	August 2013	\$3.97 billion	94,803
<i>Home & Community Based Services</i>			47,646
Managed Medical Assistance	May 2014	\$14.4 billion	3,233,235

The LTC program provides services in two settings: nursing facilities or HCBS such as a recipient’s home, an assisted living facility, or an adult family care home. Nursing facility services are an entitlement program for eligible enrollees and no waitlist exists; however, HCBS

¹⁰ The current Managed Medical Assistance waiver is approved as an 1115 waiver and was last approved for the time period of July 31, 2014 through June 30, 2017. The Long-Term Care Managed Care waiver is approved as a section 1915(b) and section 1915(c) combination waiver and was most recently approved through December 27, 2021 by the federal Centers for Medicare and Medicaid Services.

¹¹ Agency for Health Care Admin., *SMMC MMA Enrollment by County by Plan* (as of March 1, 2017), http://ahca.myflorida.com/medicaid/Finance/data_analytics/enrollment_report/index.shtml (last visited April 7, 2017).

¹² Agency for Health Care Admin., *Statewide Medicaid Managed Care (Presentation to House Health and Human Services Committee - Jan. 10, 2017)*, slide 2, http://ahca.myflorida.com/medicaid/recent_presentations/House_Health_Human_Services_Med_101_2017-01-10.pdf (last visited Mar. 1, 2017).

are delivered through waivers and are dependent on the availability of annual funding in the general appropriations act (GAA), and there are 43,195 on the waitlist as of April 3, 2017.

Enrollment in the HCBS portion of LTC is managed based on a priority system and wait list. For the 2016-2017 waiver year, the state is approved for 62,500 unduplicated recipients in the HCBS portion of the program.¹³ In order to be eligible for the program, a recipient must be both clinically eligible as required under s. 409.979, F.S., and financially eligible for Medicaid.

Eligibility and Enrollment

The AHCA is the single state agency for Medicaid; however, through an interagency agreement with the Department of Elderly Affairs (DOEA), the DOEA is Florida's federally mandated pre-admission screening program for nursing home applicants through its Long-Term Care Services (CARES) program, including for LTC.¹⁴ The CARES program has 18 field offices across the state, which are staffed with physicians, nurses, and other health care professionals who evaluate the level of care an individual may or may not need. The frailty-based assessment results in a priority score for an individual, who is then placed on the wait list based on his or her priority score.

To receive nursing facility care, an individual must also be determined to meet the requirements of s. 409.985(3), F.S. This subsection requires:

The CARES program shall determine if an individual requires nursing facility care and, if the individual requires such care, assign the individual to a level of care as described in s. 409.983(4), F.S. When determining the need for nursing facility care, consideration shall be given to the nature of the services prescribed and which level of nursing or other health care personnel meets the qualifications necessary to provide such services and the availability to and access by the individual of community or alternative resources. For the purposes of the long-term care managed care program, the term "nursing facility care" means the individual:

(a) Requires nursing home placement as evidenced by the need for medical observation throughout a 24-hour period and care required to be performed on a daily basis by, or under the direct supervision of, a registered nurse or other health care professional and requires services that are sufficiently medically complex to require supervision, assessment, planning, or intervention by a registered nurse because of a mental or physical incapacitation by the individual;

(b) Requires or is at imminent risk of nursing home placement as evidenced by the need for observation throughout a 24-hour period and

¹³ Letter from U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services to Beth Kidder, Deputy Secretary for Medicaid, Agency for Health Care Administration (December 19, 2016), http://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/LTC_Approval_Letter_2016-12-19.pdf (last visited Mar. 1, 2017).

¹⁴ Florida Dep't of Elder Affairs, *Comprehensive Assessment and Review for Long-Term Care Services (CARES)*, <http://elderaffairs.state.fl.us/does/cares.php> (last visited Mar. 1, 2017).

care and the constant availability of medical and nursing treatment and requires services on a daily or intermittent basis that are to be performed under the supervision of licensed nursing or other health professionals because the individual is incapacitated mentally or physically; or

(c) Requires or is at imminent risk of nursing home placement as evidenced by the need for observation throughout a 24-hour period and care and the constant availability of medical and nursing treatment and requires limited services that are to be performed under the supervision of licensed nursing or other health professionals because the individual is mildly incapacitated mentally or physically.

Individuals are released from the wait list periodically, based on the availability of funding and their priority scores. The Legislature has specifically directed funding in the past several years through the GAA to serve elders off the waitlist who have a priority score of four or higher.¹⁵ Individuals who are frailer or have an immediate need for services receive a higher rank on the waitlist. Those who have resided in a nursing facility for more than 60 days receive priority enrollment into the HCBS portion of the program. Exemptions from the wait list also exist under s. 409.979(3)(f), F.S. Those exempted individuals include:

- Persons who are 18, 19, or 20 years of age who have a chronic, debilitating disease or condition of one or more physiological or organ systems which generally make the individual dependent upon 24-hour-per-day medical, nursing, or health supervision, or intervention;
- Nursing facility residents who request to transition into the community and who have resided in a Florida-licensed skilled nursing facility for at least 60-consecutive days; or
- Persons referred by the DCF pursuant to the Adult Protective Services, ss. 415.101-415.113, F.S., as high risk and who are placed in an assisted living facility temporarily funded by the DCF.

Before being released from the waitlist, however, individuals must meet the following eligibility requirements to enroll in the program:¹⁶

- Be age 65 years or older or age 18 and eligible for Medicaid by reason of a disability; and
- Be determined by the CARES preadmission screening program to require nursing facility care as defined in s. 409.985(3), F.S.

Some individuals who are enrolled in waiver programs or other coverages may enroll in the LTC program, but are not required to, and those are:

- Developmental Disabilities waiver program;
- Traumatic Brain and Spinal Cord Injury waiver;
- Project AIDS Care (PAC) waiver;
- Adult Cystic Fibrosis waiver;
- Program of All-Inclusive Care for the Elderly (PACE);
- Familial Dysautonomia waiver;
- Model waiver; or

¹⁵ See Ch. Law 2016-66, line item 232; Ch. Law 2015-232, line item 226; and Ch. Law 2014-51, line item 242. In state fiscal year 2013-14, the GAA provided funding during first year of the LTC program for those on the wait list with priority scores of 5 or higher. (Ch. Law 2013-40, line item 414).

¹⁶ See s. 409.979, F.S.

- Other creditable coverage excluding Medicare.¹⁷

Individuals, both those who are enrolled in LTC and those on the wait list, must be re-screened at least annually or whenever there is a significant change in circumstances, such as change in caregivers or medical condition.¹⁸

Delivery System and Benefits

The AHCA conducted a competitive procurement to select LTC plans in each of the 11 regions in 2012. Contracts were awarded to health maintenance organizations (HMOs) and provider service networks (PSNs). Six non-specialty plans are currently contracted, including one PSN that is available in all 11 regions and one HMO that is in 10 regions. Recipients receive choice counseling services to assist them in selecting the plan that will best meet their needs.

Each plan under LTC is required to provide a minimum level of services. These services include:

- Adult companion care;
- Adult day health care;
- Assisted living;
- Assistive care services;
- Attendant care;
- Behavioral management;
- Care coordination and case management;
- Caregiver training;
- Home accessibility training;
- Home-delivered meals;
- Homemaker;
- Hospice;
- Intermittent and skilled nursing;
- Medical equipment and supplies;
- Medication administration;
- Medicaid management;
- Nursing facility;
- Nutritional assessment/risk reduction;
- Personal care;
- Personal emergency response system;
- Respite care;
- Therapies; and
- Non-emergency transportation.¹⁹

An LTC plan may elect to offer expanded benefits to its enrollees. Some of the approved expanded benefits within LTC include:

¹⁷ See s. 409.972, F.S.

¹⁸ Application for §1915(c) Home and Community-Based Services Waiver (Effective July 1, 2013), pp. 45-46, http://www.fdhc.state.fl.us/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/mma/LTC_1915c_Application.pdf (last visited Mar. 1, 2017).

¹⁹ See s. 409.98, F.S.

- Cellular phone service;
- Dental services;
- Emergency financial assistance;
- Hearing evaluation;
- Mobile personal emergency response system;
- Non-medical transportation;
- Over-the-counter medication and supplies;
- Support to transition out of a nursing facility;
- Vision services; and
- Wellness grocery discount.²⁰

LTC enrollees who are not eligible for Medicare also receive their medical services through an MMA plan. Some plans participate in both components in the same regions, and a recipient may choose the same managed care plan for both components, known as a comprehensive plan.

The AHCA's contract with the LTC plans include a statutorily required incentive payment adjustment to encourage increased utilization of HCBS services and a matching reduction in nursing facility placements. The incentive adjustment must be modified in each successive rate period in accordance with s. 409.983, F.S., as follows:

- (5) The agency shall make an incentive adjustment in payment rates to encourage the increased utilization of home and community-based services and commensurate reduction of institutional placement. The incentive adjustment shall be modified in each successive rate period during the first contract period, as follows:
- (a) A 2-percentage point shift in the first rating-setting period;
 - (b) A 2-percentage point shift in the second rate-setting period, as compared to the utilization mix at the end of the first rate-setting period;
- or
- (c) A 3-percentage point shift in the third rate-setting period, and in each successive rate-setting period during the first contract period, as compared to the utilization mix at the end of the immediately preceding rate-setting period.

The incentive adjustment shall continue in subsequent contract periods, at a rate of three percentage points per contract year as compared to the utilization mix at the end of the immediately preceding rate-setting period, until no more than 35 percent of the plan's enrollees' are placed in institutional settings. The agency shall annually report to the Legislature the actual change in the utilization mix of home and community-based services compared to institutional placements and provide a recommendation for utilization mix requirements for future contracts.

²⁰ Agency for Health Care Administration, MMA - Model Contract - Attachment I - Scope of Services (effective date Feb. 1, 2017) pp. 4-6, http://ahca.myflorida.com/medicaid/statewide_mc/pdf/Contracts/2017-02-01/02-01-17_MODEL_Attachment_I-Scope_of_Services.pdf (last visited Feb. 1, 2017).

During the first year of the LTC program, the AHCA reports a 12.1 percent decrease in the number of Medicaid recipients residing in a nursing facility.²¹

Reprocurement of the SMMC Contracts

The AHCA has started the process for the re-procurement of the managed care contracts for the SMMC program. The contracts were initially procured in 2012 and became effective in 2013 as 5-year contracts. An invitation to negotiate (ITN) will be released in the summer of 2017.²² The AHCA posted a request to receive non-binding Letters of Intent to Bid on its website with a deadline of February 13, 2017. The AHCA received 41 total responses from interested providers and plans for the ITN.²³ The databook will be posted to AHCA's website on March 30, 2017, and a public meeting to review the databook with the AHCA's contracted actuary is scheduled for April 12, 2017.

Americans with Disabilities Act

In June of 2009, the United States Supreme Court held that public entities must provide community-based services to persons with disabilities when such services would be appropriate; when affected persons are not opposed to such treatments; and when such services can be reasonably accommodated. To not provide the opportunity for persons with disabilities to receive services in the community constitutes discrimination in violation of Title II of the Americans with Disabilities Act (ADA).²⁴

The *Olmstead* decision is further supported through federal regulation, which states:

No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any public entity.²⁵

The Department of Justice's (DOJ) Civil Rights Division has conducted more than 40 *Olmstead* review cases in 25 states from 2009 to 2012, including cases in Florida.²⁶ Intervention from the DOJ may come through two different forms: A statement of interest where the DOJ intervenes in an existing lawsuit, but is not a party, or secondly, the DOJ investigates allegations and issues a

²¹ Agency for Health Care Adm., *Senate Bill 682 Analysis* (Feb. 13, 2017) (on file with Senate Committee on Health Policy).

²² Agency for Health Care Administration, *AHCA Announces Start of Re-Procurement Process for Statewide Medicaid Managed Care Program* (Feb. 3, 2017)

http://ahca.myflorida.com/Executive/Communications/Press_Releases/pdf/ReprocurementPressRelease.pdf (last visited: Mar. 21, 2017).

²³ Agency for Health Care Administration, *Statewide Medicaid Managed Care Program Non-Binding Letters of Intent Received by 2/13/2017, in response to Intent to Bid Posted 2/3/2017*,

http://ahca.myflorida.com/medicaid/statewide_mc/pdf/Intent_to_Bid_Responses.pdf (last visited Mar. 21, 2017).

²⁴ *Olmstead v. L.C.*, 527 U.S. 581(1999); 138 F.3d 893, affirm in part, vacated, and remanded.

²⁵ 28 CFR section 35.130(a) (2016).

²⁶ MaryBeth Musumeci and Henry Claypool, KFF.org, *Olmstead's Role in Community Integration for People with Disabilities under Medicaid: 15 Years after the Supreme Court's Olmstead's Decision* (June 18, 2014) <http://kff.org/report-section/olmsteads-role-in-community-integration-for-people-with-disabilities-under-medicaid-issue-brief> (last visited Mar. 3, 2017).

letter of findings and a settlement agreement. A DOJ investigation or intervention may also result in litigation to enforce a mandate.²⁷

In July 2013, the federal DOJ filed a lawsuit against the State of Florida alleging that the state had failed to move nearly 200 disabled children from nursing homes and institutional care to less restrictive environments in violation of the ADA.²⁸ The complaint included other allegations relating to the state's policies, procedures, reimbursement levels, method of service denials, and network capacity issues in its programs for children with significant medical needs.

A previous December 2011, investigation by the DOJ is detailed in the complaint, including notice that the parties met on several occasions to attempt resolution of the issues.²⁹ The DOJ complaint sought a declaratory judgement that the state had violated Title II of the ADA, to award compensatory damages, and any other relief as the court may find appropriate.³⁰ The case has been consolidated with a private lawsuit against the state alleging similar issues, that the state's practices and policies have unnecessarily placed children with disabilities in nursing facilities or placed them at risk of placement in nursing facilities.³¹ Litigation may also be brought by individuals to enforce a mandate.

The state has disputed the allegations in the DOJ complaint and argued that with the implementation of managed care and other policy changes in Medicaid, these issues are moot. The court has rejected these arguments thus far. Florida has most recently sought partial summary judgement to remove monetary damages as a legal remedy.³²

Guidance from the federal CMS stresses that all waiver programs for long-term care support programs, such as LTC, "must be delivered in the most integrated fashion, in the most integrated setting, and in a way that offers the greatest opportunities for active community and workforce participation."³³ Consistency with the *Olmstead* decision is found in every "essential element" of the guidance document.

The CMS guidance document also indicates that states will be expected to incorporate all services into the managed care plan capitation payment and that any exemptions will require comprehensive justification of how the goals of integration, efficiency and improved health and

²⁷ *Id.*

²⁸ *U.S. v. Florida*, No. 12-CV-60460, (SD. Fla., filed July 22, 2013).

²⁹ *U.S. v. Florida*, No. 12-CV-60460, (SD. Fla., filed July 22, 2013), 21.

³⁰ *Id.* at 23.

³¹ U.S. Dep't of Justice, *Americans with Disabilities Act - Olmstead Enforcement*, https://www.ada.gov/olmstead/olmstead_cases_list2.htm#fla (last visited Mar. 3, 2017); see *A.R. v. Dudek*, No. 12-CV 60460 (S.D. Fla. 2012).

³² U.S. Dep't of Justice, *Americans with Disabilities Act - Olmstead Enforcement*, https://www.ada.gov/olmstead/olmstead_cases_list2.htm#fla (last visited Mar. 3, 2017).

³³ Centers for Medicare and Medicaid Services, *Guidance to States Using 1115 Demonstrations or 1915(b) Waivers for Managed Long Term Services and Supports Programs* (5/20/13), <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Delivery-Systems/Downloads/1115-and-1915b-MLTSS-guidance.pdf>, p. 8, (last visited Mar. 3, 2017).

quality of life will be achieved.³⁴ Exclusion of any services will require routine re-assessment to ensure no violations of any federal laws, including the ADA or *Olmstead* requirements.³⁵

Prompt Payment of Claims

Florida's prompt pay laws govern payment of claims submitted to insurers and HMOs, including Medicaid managed care plans in accordance with ss. 641.315, 641.3155, and 641.513, F.S.³⁶ These provisions establish HMO provider contract requirements, prompt payment guidelines for provider payments, and requirements for the provision of emergency services and care for HMO enrollees. An HMO or insurer has 12 months after payment is made to a provider to make a claim for overpayment against the provider, if the provider is licensed under ch. 458, F.S., or ch. 459, F.S., (physicians), ch. 460, F.S., (chiropractors), ch. 461, F.S. (podiatrists), or ch. 466, F.S., (dentists). For all other types of providers, an insurer or HMO has up to 30 months after such payment to make a claim for overpayment, and a 40-day timeline for providers to pay, deny, or contest the claim for overpayment.³⁷ The law provides a process and timeline for providers to pay, deny, or contest the claim. Further, the law prohibits an insurer or HMO from retroactively denying a claim because of the ineligibility of an insured or subscriber more than one year after the date the claim is paid. The statutes do not include any provisions for the imposition of fines for non-compliance; however, the AHCA enforces these standards through the imposition of liquidated damages or sanctions, including fines.³⁸

III. Effect of Proposed Changes:

Section 1 amends s. 400.141, F.S., effective October 1, 2018, to add a requirement for nursing home facilities to confirm for the AHCA whether a nursing home facility resident who is a Medicaid recipient, or whose Medicaid eligibility is pending, is a candidate for home and community-based services (HCBS) under s. 409.965(3)(c), no later than the resident's 50th consecutive day of residency in the nursing home facility. The nursing home facility's notice to the AHCA is to assist in the identification of nursing home residents who may be eligible for both HCBS and the LTC component.

Section 2 amends s. 409.964, F.S., to remove obsolete dates relating to the submission of state plan amendments or waivers by a date certain, all of which have passed.

Section 3 amends s. 409.965, F.S., to create a new exemption from mandatory enrollment in the LTC program. Effective October 1, 2018, the section exempts persons who are assigned into level of care 1 under s. 409.983(4), F.S., and have resided in a nursing facility for 60 or more consecutive days. The exemption shall become effective on the first day of the first month after

³⁴ *Id.* at 12.

³⁵ *Id.*

³⁶ The prompt pay provisions apply to HMO contracts and major medical policies offered by individual and group insurers licensed under ch. 624, F.S., including preferred provider policies and an exclusive provider organization, and individual and group contracts that only provide direct payments to dentists.

³⁷ Section 641.3155, F.S., provide exceptions to this time limit in cases relating to fraud.

³⁸ Agency for Health Care Administration, *Senate Bill 682 Analysis* (Feb. 2, 2017), p. 6, (on file with the Senate Committee on Health Policy).

the person meets the criteria for the exemption. An exemption under this section has no bearing on an individual's eligibility for the MMA program.

An exemption from mandatory participation in the LTC program is also created for recipients receiving hospice care while residing in a nursing facility. The exemption shall become effective on the first day of the first month after the person meets the criteria for the exemption. An exemption under this section has no bearing on an individual's eligibility for the MMA program.

The effect of these exemptions is that nursing homes and hospices will be paid on a fee-for-service basis from the AHCA for these Medicaid recipients rather than receiving payment from the managed care plans.

Notwithstanding the exemptions provided above, the agency shall authorize the enrollment or continued enrollment of a Medicaid recipient in or into the LTC program who:

- Is eligible for the LTC program under s. 409.979, F.S., is 18 years of age or older, and is eligible for Medicaid by reason of disability;
- A person who is given priority enrollment for HCBS under s. 409.979(3)(f), F.S., or
- A person who has been identified as a candidate for HCBS by the nursing facility administrator and any long-term care plan case manager assigned to the resident.

The identification of the resident as a candidate for HCBS must be made in consultation with:

- The resident or the resident's legal representative or designee;
- The resident's personal physician or, if the resident does not have a personal physician, the facility's medical director; and
- A registered nurse who has participated in developing, maintaining, or reviewing the individual's resident care plan³⁹ as defined in s. 400.021, F.S.

Before determining that a nursing home resident is exempt from the long-term care managed care program, the agency is required to confirm whether the person has been identified as a candidate for HCBS services. If a nursing facility resident who has been identified as exempt is later identified as a candidate for HCBS, the nursing facility administrator must promptly notify the AHCA to ensure candidates are transitioned smoothly between programs, if appropriate.

Section 4 amends s. 409.967, F.S., relating to managed care plan accountability, to direct the AHCA to impose fines, and to authorize the imposition of other sanctions on a plan that willfully fails to comply with the managed care plan accountability provisions of ss. 641.315 (provider contracts), 641.3155 (prompt payment of claims), 641.513 (requirements for providing emergency services and care), and the added cross-referenced provision, s. 409.928(5), F.S., (long-term care managed care plan accountability provisions).

³⁹ A resident care plan is a written plan which must be reviewed not less than quarterly by a registered nurse, with participation by other staff and the resident or his or her legal representative, which includes, a comprehensive assessment of the needs of an individual resident; the type and frequency of services required to provide the necessary care for the resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being; a listing of services provided; and an explanation of goals.

Section 5 amends s. 409.979, F.S., relating to the pre-requisite criteria for eligibility for enrollees in the LTC program. This section clarifies that only those Medicaid recipients who are not exempt under s. 409.965, F.S., and who meet all of the criteria under this section may be eligible to receive long-term care services by participating in the LTC program. The amended language aligns the eligibility with the modifications made in Section 2 of the bill.

Section 6 amends s. 409.982, F.S., relating to provider networks of a long-term care managed care plan. This section requires the managed care plans to offer a network contract to all nursing homes and hospices for the first 12 months of a contract period in a region if that region was not served by that plan prior to the procurement, i.e., under the prior contract period. The nursing homes and hospices must meet the credentialing and recredentialing requirements specified in the plan's contract with the agency.

After the 12-month period, the plan may exclude any nursing home or hospice for failure to meet quality or performance standards; however, the plan must provide 30 days' written notice before the effective date to all affected recipients. If the plan excludes providers from its network or fails to renew a provider's contract, the AHCA must require a report from that plan which shows the quality or performance indicators used to exclude the provider and demonstrates how the provider failed to meet the plan's criteria.

Section 7 provides that except as otherwise provided in this act, and except for this section, which shall take effect upon becoming a law, this act shall take effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The *Olmstead* decision requires the state to deliver services "in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities." The requirement applies whether the state delivers those services using a managed care delivery system or fee-for-service process. However, as noted earlier, the federal CMS has also released guidance statements since that 1999 decision about the exclusion of services from managed care and how the agency will review those actions. Such action by states will receive strict scrutiny from federal CMS and require justification that services are still being rendered in the most integrated manner.

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

None.

B. Private Sector Impact:

This bill changes how services are delivered for the LTC component when the new contracts are effective under the invitation to negotiate which will be conducted this summer. Changes in the delivery of benefits may impact private providers that are currently providing services to recipients in the program now; however, that may have occurred regardless with any changeover in managed care contracts. There is no guarantee that the same providers will receive contracts in the same areas of the state.

The revisions to the prompt-pay section of the bill may impact the private sector to a larger degree if it results in providers and facilities receiving payment for services on a more expedient basis. The AHCA indicates that the statutes already permit the imposition of sanctions for noncompliance with the prompt pay requirements and that sanctions have been applied. A more aggressive enforcement effort may have been lacking due to the inability to determine from the available claims data that the prompt pay provision has been violated.

Requiring managed care plans to contract with all nursing facilities and hospices that meet credentialing requirements in an awarded region for 12 months following any new procurement for the LTC program may require the plans to contract with providers that they previously non-renewed or terminated 4-5 years ago. The AHCA indicates that this number of non-renewed or terminated providers is low.

C. Government Sector Impact:

The agency maintains the fiscal position from its analysis of the bill in its original form, despite the significant differences between the original bill and the committee substitute. The agency reports that the bill will have a significant fiscal impact on the Medicaid program, resulting in millions of dollars lost in cost avoidance. It is believed these estimates are significantly overstated, however. The agency indicates that by exempting nursing facility services for those meeting specified criteria from the LTC managed care program, costs will re-appear from the previous LTC program at an estimated additional cost of \$200 million per year.

By contrast, however, the Florida Health Care Association estimates that by exempting nursing facility residents who have been in care over 60 days and meet specified criteria, avoidable costs related to case management (\$31.3 million) and administrative expenses (\$36.5 million) paid to managed care plans can be saved each year by the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill includes a requirement for the long-term care managed care plans to offer a contract to all nursing homes and hospices in a region which meet the recredentialing or credentialing requirements of the plan's contract with the AHCA if that the region was not served by that plan after the most recent procurement. This language may be confusing as to which procurement process is the baseline for determining which nursing homes and hospices must be offered a contract and in which regions the mandatory contracting would be applicable. It may be better to reference those providers who did not have contracts immediately prior to the most recently concluded procurement process.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.964, 409.965, 409.967, 409.979, and 409.982.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Health and Human Services on April 13, 2017:

The committee substitute makes a clarifying amendment to replace language that states the region was not served by the plan after the most recent procurement, to the plan was not serving the regions immediately prior to the procurement in that region related to long-term managed care procurement.

CS by Health Policy on March 27, 2017:

The CS:

- Requires a nursing home to be prepared to confirm for the AHCA whether a nursing home resident, who is a Medicaid recipient or whose Medicaid eligibility is pending, is a candidate for HCBS, by the resident's 50th consecutive day of residency in the nursing home facility;
- Establishes the effective date for those exempted from the LTC managed care program;
- Provides that a nursing facility resident is not exempt from the LTC managed care program if the resident has been identified as a candidate for HCBS by the nursing facility administrator and any LTC case manager assigned to the resident;
- Establishes an identification and evaluation process for nursing facility residents for HCBS;
- Requires confirmation from the AHCA as to whether the person has been identified as a candidate for HCBS before a determination can be made that an individual is exempt from the LTC managed care program;
- Requires nursing facility administrators to promptly notify the AHCA of any exempt nursing home residents who have later been identified as candidates for HCBS; and

- Requires a plan to contract with all credentialed nursing homes and hospices if a new region is awarded under a new procurement cycle.

B. Amendments:

None.

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



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

A bill to be entitled

An act relating to Medicaid managed care; amending s. 400.141, F.S.; requiring that nursing home facilities be prepared to provide confirmation within a specified timeframe to the Agency for Health Care Administration as to whether certain nursing home facility residents are candidates for certain services; amending s. 409.964, F.S.; providing that covered services for long-term care under the Medicaid managed care program are those specified in part IV of ch. 409, F.S.; deleting an obsolete provision; amending s. 409.965, F.S.; providing that certain residents of nursing facilities are exempt from participation in the long-term care managed care program; providing for application of the exemption; providing that eligibility for the Medicaid managed medical assistance program is not affected by such provisions; providing conditions under which the exemption does not apply; requiring the agency to confirm whether certain persons have been identified as candidates for home and community-based services; requiring a certain notice to the agency by nursing facility administrators; amending s. 409.967, F.S.; requiring the agency to impose fines and authorizing other sanctions for willful failure to comply with specified payment provisions; amending s. 409.979, F.S.; providing that certain exempt Medicaid recipients are



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not required to receive long-term care services through the long-term care managed care program; amending s. 409.982, F.S.; revising parameters under which a long-term care managed care plan must contract with nursing homes and hospices; specifying that the agency must require certain plans to report information on the quality or performance criteria used in making a certain determination; providing effective dates.

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

Section 1. Effective October 1, 2018, paragraph (v) is added to subsection (1) of section 400.141, Florida Statutes, to read:

400.141 Administration and management of nursing home facilities.—

(1) Every licensed facility shall comply with all applicable standards and rules of the agency and shall:

(v) Be prepared to confirm for the agency whether a nursing home facility resident who is a Medicaid recipient, or whose Medicaid eligibility is pending, is a candidate for home and community-based services under s. 409.965(3)(c), no later than the resident's 50th consecutive day of residency in the nursing home facility.

Section 2. Section 409.964, Florida Statutes, is amended to read:

409.964 Managed care program; state plan; waivers.—The Medicaid program is established as a statewide, integrated



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57 managed care program for all covered services, including long-
58 term care services as specified under this part. The agency
59 shall apply for and implement state plan amendments or waivers
60 of applicable federal laws and regulations necessary to
61 implement the program. Before seeking a waiver, the agency shall
62 provide public notice and the opportunity for public comment and
63 include public feedback in the waiver application. The agency
64 shall hold one public meeting in each of the regions described
65 in s. 409.966(2), and the time period for public comment for
66 each region shall end no sooner than 30 days after the
67 completion of the public meeting in that region. ~~The agency
68 shall submit any state plan amendments, new waiver requests, or
69 requests for extensions or expansions for existing waivers,
70 needed to implement the managed care program by August 1, 2011.~~

71 Section 3. Effective October 1, 2018, section 409.965,
72 Florida Statutes, is amended to read:

73 409.965 Mandatory enrollment.—All Medicaid recipients shall
74 receive covered services through the statewide managed care
75 program, except as provided by this part pursuant to an approved
76 federal waiver.

77 (1) The following Medicaid recipients are exempt from
78 participation in the statewide managed care program:

79 (a)(1) Women who are eligible only for family planning
80 services.

81 (b)(2) Women who are eligible only for breast and cervical
82 cancer services.

83 (c)(3) Persons who are eligible for emergency Medicaid for
84 aliens.

85 (2) (a) Persons who are assigned into level of care 1 under



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86 s. 409.983(4) and have resided in a nursing facility for 60 or
87 more consecutive days are exempt from participation in the long-
88 term care managed care program. For a person who becomes exempt
89 under this paragraph while enrolled in the long-term care
90 managed care program, the exemption shall take effect on the
91 first day of the first month after the person meets the criteria
92 for the exemption. This paragraph does not affect a person's
93 eligibility for the Medicaid managed medical assistance program.

94 (b) Persons receiving hospice care while residing in a
95 nursing facility are exempt from participation in the long-term
96 care managed care program. For a person who becomes exempt under
97 this paragraph while enrolled in the long-term care managed care
98 program, the exemption takes effect on the first day of the
99 first month after the person meets the criteria for the
100 exemption. This paragraph does not affect a person's eligibility
101 for the Medicaid managed medical assistance program.

102 (3) Notwithstanding subsection (2):

103 (a) A Medicaid recipient who is otherwise eligible for the
104 long-term care managed care program, who is 18 years of age or
105 older, and who is eligible for Medicaid by reason of a
106 disability is not exempt from the long-term care managed care
107 program under subsection (2).

108 (b) A person who is afforded priority enrollment for home
109 and community-based services under s. 409.979(3) (f) is not
110 exempt from the long-term care managed care program under
111 subsection (2).

112 (c) A nursing facility resident is not exempt from the
113 long-term care managed care program under paragraph (2) (a) if
114 the resident has been identified as a candidate for home and



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115 community-based services by the nursing facility administrator
116 and any long-term care plan case manager assigned to the
117 resident. Such identification must be made in consultation with
118 the following persons:

119 1. The resident or the resident's legal representative or
120 designee;

121 2. The resident's personal physician or, if the resident
122 does not have a personal physician, the facility's medical
123 director; and

124 3. A registered nurse who has participated in developing,
125 maintaining, or reviewing the individual's resident care plan as
126 defined in s. 400.021.

127 (d) Before determining that a person is exempt from the
128 long-term care managed care program under paragraph (2) (a), the
129 agency shall confirm whether the person has been identified as a
130 candidate for home and community-based services under paragraph

131 (c). If a nursing facility resident who has been determined
132 exempt is later identified as a candidate for home and
133 community-based services, the nursing facility administrator
134 shall promptly notify the agency.

135 Section 4. Paragraph (j) of subsection (2) of section
136 409.967, Florida Statutes, is amended to read:

137 409.967 Managed care plan accountability.—

138 (2) The agency shall establish such contract requirements
139 as are necessary for the operation of the statewide managed care
140 program. In addition to any other provisions the agency may deem
141 necessary, the contract must require:

142 (j) Prompt payment.—Managed care plans shall comply with
143 ss. 641.315, 641.3155, and 641.513, and the agency shall impose



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144 fines, and may impose other sanctions, on a plan that willfully
145 fails to comply with those sections or s. 409.982(5).

146 Section 5. Subsection (1) of section 409.979, Florida
147 Statutes, is amended to read:

148 409.979 Eligibility.—

149 (1) PREREQUISITE CRITERIA FOR ELIGIBILITY.—Medicaid
150 recipients who meet all of the following criteria are eligible
151 to receive long-term care services and, unless exempt under s.
152 409.965, must receive long-term care services by participating
153 in the long-term care managed care program. The recipient must
154 be:

155 (a) Sixty-five years of age or older, or age 18 or older
156 and eligible for Medicaid by reason of a disability.

157 (b) Determined by the Comprehensive Assessment Review and
158 Evaluation for Long-Term Care Services (CARES) preadmission
159 screening program to require nursing facility care as defined in
160 s. 409.985(3).

161 Section 6. Subsections (1) and (2) of section 409.982,
162 Florida Statutes, are amended to read:

163 409.982 Long-term care managed care plan accountability.—In
164 addition to the requirements of s. 409.967, plans and providers
165 participating in the long-term care managed care program must
166 comply with the requirements of this section.

167 (1) PROVIDER NETWORKS.—Managed care plans may limit the
168 providers in their networks based on credentials, quality
169 indicators, and price. For the first 12 months of a contract
170 period following a procurement for the long-term care managed
171 care program under s. 409.981, if a plan has been period between
172 October 1, 2013, and September 30, 2014, each selected for a



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173 region that the plan was not serving immediately prior to the
174 procurement, the plan must offer a network contract to all
175 nursing homes in that region which meet the recredentialing
176 requirements and to all hospices in that region which meet the
177 credentialing requirements specified in the plan's contract with
178 the agency the following providers in the region:
179 ~~(a) Nursing homes.~~
180 ~~(b) Hospices.~~
181 ~~(c) Aging network service providers that have previously~~
182 ~~participated in home and community-based waivers serving elders~~
183 ~~or community service programs administered by the Department of~~
184 ~~Elderly Affairs. After a provider specified in this subsection~~
185 ~~has actively participated in a managed care plan's network for~~
186 ~~12 months of active participation in a managed care plan's~~
187 ~~network, the plan may exclude the provider any of the providers~~
188 ~~named in this subsection from the plan's network for failure to~~
189 ~~meet quality or performance criteria. If a the plan excludes a~~
190 ~~provider from its network under this subsection the plan, the~~
191 ~~plan must provide written notice to all recipients who have~~
192 ~~chosen that provider for care. The notice must be provided at~~
193 ~~least 30 days before the effective date of the exclusion. The~~
194 ~~agency shall establish contract provisions governing the~~
195 ~~transfer of recipients from excluded residential providers. The~~
196 ~~agency shall require a plan that excludes a provider from its~~
197 ~~network or that fails to renew the plan's contract with a~~
198 ~~provider under this subsection to report to the agency the~~
199 ~~quality or performance criteria the plan used in deciding to~~
200 ~~exclude the provider and to demonstrate how the provider failed~~
201 ~~to meet those criteria.~~



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202 (2) SELECT PROVIDER PARTICIPATION.—Except as provided in
203 this subsection, providers may limit the managed care plans they
204 join. Nursing homes and hospices that are enrolled Medicaid
205 providers must participate in all eligible plans selected by the
206 agency in the region in which the provider is located, with the
207 exception of plans from which the provider has been excluded
208 under subsection (1).
209 Section 7. Except as otherwise provided in this act and
210 except for this section, which shall take effect upon this act
211 becoming a law, this act shall take effect July 1, 2017.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 682

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Stargel

SUBJECT: Medicaid Managed Care

DATE: April 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Forbes</u>	<u>Williams</u>	<u>AHS</u>	<u>Recommend: Fav/CS</u>
3.	<u>Forbes</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 682 exempts from the Long-Term Care component (LTC) of the Statewide Medicaid Managed Care (SMMC) program those Medicaid recipients who have resided in a nursing facility for 60 or more consecutive days, with certain exceptions. The bill also exempts those recipients in the LTC component who are receiving hospice care while residing in a nursing facility. These recipients would receive long-term care services through fee-for-service Medicaid providers and other medical services through the managed medical assistance component (MMA) of the SMMC program. This section of the bill is effective October 1, 2018.

The bill provides that a nursing home resident will not be exempt from the LTC component if the resident has been identified as a candidate for home and community-based services (HCBS) by specified individuals. The agency must confirm whether an individual has been identified as a candidate for HCBS before determining that a person is exempt from the LTC component. The bill provides notice provisions should the nursing home resident later be identified as a candidate for HCBS services. The additional exceptions apply to a Medicaid recipient who is aged 18 or older and eligible for Medicaid due to a disability or a person who has priority enrollment for home and community-based services.

Effective July 1, 2017, the bill requires the Agency for Health Care Administration (AHCA) to impose fines and authorizes other sanctions for willful violations with the prompt pay provisions of sections 641.315, 641.3155, 641.513, and 409.982(5), Florida Statutes.

Managed care plans must also contract with all nursing homes and hospices that meet credentialing and re-credentialing requirements as specified in the plan's contract with the AHCA for the first 12 months following a procurement in any regions where a plan is awarded a contract and that region was not previously served by that plan during the most recent procurement period. If a plan excludes a nursing home or hospice for the remainder of the contract period, the AHCA must require the plan to submit the performance and quality criteria that was used to exclude the provider and to demonstrate how the provider failed to meet the plan's criteria.

The AHCA believes that if nursing facility residents who meet specified criteria are exempted from the LTC program, costs will increase by an estimated \$200 million per year. The Florida Health Care Association disagrees with the AHCA assessment and believes this change will save the state a total of \$67.8 million a year.

Except as otherwise provided, the bill is effective upon becoming law.

II. Present Situation:

Florida Medicaid

The Medicaid program is a partnership between the federal and state governments to provide medical care to low income children and disabled persons. Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services (CMS). The state plan outlines Medicaid eligibility standards, policies, and reimbursement methodologies.

Florida Medicaid serves as the safety net to Florida's health care delivery system. Medicaid currently is the second largest expenditure in Florida's budget behind education with estimated expenditures for the 2016-2017 state fiscal year of \$25.8 billion¹ and covers 20 percent of all Floridians. Over 4 million Floridians are currently enrolled in Medicaid, including:

- 47 percent of Florida's children;
- 63 percent of Florida's births; and
- 61 percent of Florida's nursing home days.²

However, Florida Medicaid does not cover all low-income Floridians. The maximum income limits for programs are illustrated below as a percentage of the federal poverty level (FPL).

¹ Office of Economic and Demographic Research, Social Services Estimating Conference, Medicaid Caseload and Expenditures (February 17, February 27, and March 9, 2017) Executive Summary, <http://edr.state.fl.us/Content/conferences/medicaid/execsummary.pdf> (last visited Mar. 21, 2017).

² Agency for Health Care Admin., Senate Health and Human Services Appropriations Committee Presentation, *Agency for Health Care Administration - Florida Medicaid* (January 11, 2017), slide 2, http://www.flsenate.gov/PublishedContent/Committees/2016-2018/AHS/MeetingRecords/MeetingPacket_3554.pdf (last visited Mar. 17, 2017).

Florida’s Current Medicaid and CHIP Eligibility Levels in Florida ³ (With Income Disregards and Modified Adjusted Gross Income)						
Children’s Medicaid			CHIP (Kidcare)	Pregnant Women	Parents	Childless Adults
Age 0-1	Age 1-5	Age 6-18	Ages 0-18			
206% FPL	140% FPL	133% FPL	210% FPL	191% FPL	31% FPL	0% FPL

Florida Medicaid is administered by the AHCA and is financed with federal and state funds. The Department of Children and Families (DCF) determines Medicaid eligibility and transmits that information to the AHCA. As the single state agency for Medicaid, the AHCA has the lead responsibility for the overall program.⁴

The structures of state Medicaid programs vary from state to state, and each state’s share of expenditures varies and is largely determined by the federal government. Federal law and regulations set the minimum amount, scope, and duration of services offered in the program, among other requirements. State Medicaid benefits are provided in statute under s. 409.903, F.S. (Mandatory Payments for Eligible Persons) and s. 409.904, F.S. (Optional Payments for Eligible Persons).

Applicants for Medicaid must be United States citizens or qualified noncitizens, must be Florida residents, and must provide social security numbers for data matching. While self-attestation is permitted for a number of data elements on the application, most components are matched through the Federal Data Services Hub.⁵ Applicants must also agree to cooperate with Child Support Enforcement during the application process.⁶

Minimum eligibility coverage thresholds are established in federal law for certain population groups, such as children, as well as minimum benefits and maximum cost sharing. The minimum benefits include items such as physician services, hospital services, home health services, and family planning.⁷ States can add benefits, pending federal approval. Florida has added benefits, including prescription drugs, adult dental services, and dialysis.⁸ For children under age 21, the benefits must include the Early and Periodic Screening, Diagnostic and Treatment services, which are those health care and diagnostic services and treatment and measures that may be needed to correct or ameliorate defects or physical and mental illnesses and conditions discovered by screening services, consistent with federal law.⁹

Waivers to the state plan may be requested and negotiated by the state through the federal Centers for Medicare and Medicaid Services (CMS) by the AHCA. Florida has several such Medicaid waivers, including one, which implemented the SMMC program. Current federal law requires the state to obtain a waiver to implement managed care. Through these waivers, the

³ U.S. Centers for Medicare and Medicaid Services, Medicaid.gov, *Florida*, <http://www.medicaid.gov/medicaid-chip-program-information/by-state/florida.html> (last visited Mar. 17, 2017).

⁴ See s. 409.963, F.S.

⁵ Florida Dep’t of Children and Families, *Family-Related Medicaid Programs Fact Sheet*, p. 4 (April 2016) <http://www.dcf.state.fl.us/programs/access/docs/Family-RelatedMedicaidFactSheet.pdf> (last visited Mar. 21, 2017).

⁶ Id.

⁷ Section 409.905, F.S.

⁸ Section 409.906, F.S.

⁹ See Section 1905 9(r) of the Social Security Act.

states have limited flexibility to design their Medicaid programs; however, even within waiver authorities, federal regulations prescribe requirements for benefits, delivery systems, cost sharing limitations, and population coverages.

Statewide Medicaid Managed Care (SMMC)

The SMMC program is designed for the AHCA to issue invitations to negotiate and competitively procure contracts with managed care plans in 11 regions of the state to provide comprehensive Medicaid coverage for most of the state’s enrollees in the Medicaid program. The SMMC has two components: managed medical assistance (MMA) and long-term care managed care (LTC). The MMA waiver expires on June 30, 2017, and the LTC waiver was recently extended through December 27, 2021.¹⁰

Part IV of ch. 409, F.S., was created in 2011 by ch. 2011-134, L.O.F., and governs the SMMC program. The LTC component began enrollment in August 2013 and completed its statewide rollout in March 2014. The MMA component began enrolling Medicaid recipients in May 2014 and finished its rollout in August 2014.

Services are delivered through six managed care plans, which vary, based on the recipient’s region; however, each region has at least two plans. Plans are paid on a capitated basis meaning that a LTC plan must pay for all covered services under the contract regardless of whether the capitated rate covers the cost of services for that recipient. For nursing facilities and hospices, the plans are required to pay those designated providers at a rate set by the AHCA.

Of those recipients enrolled in the LTC waiver, 47,646 recipients are receiving home and community based services (HCBS) as of March 1, 2017. The remaining enrollees are receiving nursing facility services.¹¹

Statewide Medicaid Managed Care - February 1, 2017			
Component	Enrollment Start Date	Budget¹²	Enrollment (as of Mar. 2017)
Long-Term Care Plan	August 2013	\$3.97 billion	94,803
<i>Home & Community Based Services</i>			47,646
Managed Medical Assistance	May 2014	\$14.4 billion	3,233,235

The LTC program provides services in two settings: nursing facilities or HCBS such as a recipient’s home, an assisted living facility, or an adult family care home. Nursing facility services are an entitlement program for eligible enrollees and no waitlist exists; however, HCBS

¹⁰ The current Managed Medical Assistance waiver is approved as an 1115 waiver and was last approved for the time period of July 31, 2014 through June 30, 2017. The Long-Term Care Managed Care waiver is approved as a section 1915(b) and section 1915(c) combination waiver and was most recently approved through December 27, 2021 by the federal Centers for Medicare and Medicaid Services.

¹¹ Agency for Health Care Admin., *SMMC MMA Enrollment by County by Plan* (as of March 1, 2017), http://ahca.myflorida.com/medicaid/Finance/data_analytics/enrollment_report/index.shtml (last visited April 7, 2017).

¹² Agency for Health Care Admin., *Statewide Medicaid Managed Care (Presentation to House Health and Human Services Committee - Jan. 10, 2017)*, slide 2, http://ahca.myflorida.com/medicaid/recent_presentations/House_Health_Human_Services_Med_101_2017-01-10.pdf (last visited Mar. 1, 2017).

are delivered through waivers and are dependent on the availability of annual funding in the general appropriations act (GAA), and there are 43,195 on the waitlist as of April 3, 2017.

Enrollment in the HCBS portion of LTC is managed based on a priority system and wait list. For the 2016-2017 waiver year, the state is approved for 62,500 unduplicated recipients in the HCBS portion of the program.¹³ In order to be eligible for the program, a recipient must be both clinically eligible as required under s. 409.979, F.S., and financially eligible for Medicaid.

Eligibility and Enrollment

The AHCA is the single state agency for Medicaid; however, through an interagency agreement with the Department of Elderly Affairs (DOEA), the DOEA is Florida's federally mandated pre-admission screening program for nursing home applicants through its Long-Term Care Services (CARES) program, including for LTC.¹⁴ The CARES program has 18 field offices across the state, which are staffed with physicians, nurses, and other health care professionals who evaluate the level of care an individual may or may not need. The frailty-based assessment results in a priority score for an individual, who is then placed on the wait list based on his or her priority score.

To receive nursing facility care, an individual must also be determined to meet the requirements of s. 409.985(3), F.S. This subsection requires:

The CARES program shall determine if an individual requires nursing facility care and, if the individual requires such care, assign the individual to a level of care as described in s. 409.983(4), F.S. When determining the need for nursing facility care, consideration shall be given to the nature of the services prescribed and which level of nursing or other health care personnel meets the qualifications necessary to provide such services and the availability to and access by the individual of community or alternative resources. For the purposes of the long-term care managed care program, the term "nursing facility care" means the individual:

(a) Requires nursing home placement as evidenced by the need for medical observation throughout a 24-hour period and care required to be performed on a daily basis by, or under the direct supervision of, a registered nurse or other health care professional and requires services that are sufficiently medically complex to require supervision, assessment, planning, or intervention by a registered nurse because of a mental or physical incapacitation by the individual;

(b) Requires or is at imminent risk of nursing home placement as evidenced by the need for observation throughout a 24-hour period and

¹³ Letter from U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services to Beth Kidder, Deputy Secretary for Medicaid, Agency for Health Care Administration (December 19, 2016), http://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/LTC_Approval_Letter_2016-12-19.pdf (last visited Mar. 1, 2017).

¹⁴ Florida Dep't of Elder Affairs, *Comprehensive Assessment and Review for Long-Term Care Services (CARES)*, <http://elderaffairs.state.fl.us/does/cares.php> (last visited Mar. 1, 2017).

care and the constant availability of medical and nursing treatment and requires services on a daily or intermittent basis that are to be performed under the supervision of licensed nursing or other health professionals because the individual is incapacitated mentally or physically; or

(c) Requires or is at imminent risk of nursing home placement as evidenced by the need for observation throughout a 24-hour period and care and the constant availability of medical and nursing treatment and requires limited services that are to be performed under the supervision of licensed nursing or other health professionals because the individual is mildly incapacitated mentally or physically.

Individuals are released from the wait list periodically, based on the availability of funding and their priority scores. The Legislature has specifically directed funding in the past several years through the GAA to serve elders off the waitlist who have a priority score of four or higher.¹⁵ Individuals who are frailer or have an immediate need for services receive a higher rank on the waitlist. Those who have resided in a nursing facility for more than 60 days receive priority enrollment into the HCBS portion of the program. Exemptions from the wait list also exist under s. 409.979(3)(f), F.S. Those exempted individuals include:

- Persons who are 18, 19, or 20 years of age who have a chronic, debilitating disease or condition of one or more physiological or organ systems which generally make the individual dependent upon 24-hour-per-day medical, nursing, or health supervision, or intervention;
- Nursing facility residents who request to transition into the community and who have resided in a Florida-licensed skilled nursing facility for at least 60-consecutive days; or
- Persons referred by the DCF pursuant to the Adult Protective Services, ss. 415.101-415.113, F.S., as high risk and who are placed in an assisted living facility temporarily funded by the DCF.

Before being released from the waitlist, however, individuals must meet the following eligibility requirements to enroll in the program:¹⁶

- Be age 65 years or older or age 18 and eligible for Medicaid by reason of a disability; and
- Be determined by the CARES preadmission screening program to require nursing facility care as defined in s. 409.985(3), F.S.

Some individuals who are enrolled in waiver programs or other coverages may enroll in the LTC program, but are not required to, and those are:

- Developmental Disabilities waiver program;
- Traumatic Brain and Spinal Cord Injury waiver;
- Project AIDS Care (PAC) waiver;
- Adult Cystic Fibrosis waiver;
- Program of All-Inclusive Care for the Elderly (PACE);
- Familial Dysautonomia waiver;
- Model waiver; or

¹⁵ See Ch. Law 2016-66, line item 232; Ch. Law 2015-232, line item 226; and Ch. Law 2014-51, line item 242. In state fiscal year 2013-14, the GAA provided funding during first year of the LTC program for those on the wait list with priority scores of 5 or higher. (Ch. Law 2013-40, line item 414).

¹⁶ See s. 409.979, F.S.

- Other creditable coverage excluding Medicare.¹⁷

Individuals, both those who are enrolled in LTC and those on the wait list, must be re-screened at least annually or whenever there is a significant change in circumstances, such as change in caregivers or medical condition.¹⁸

Delivery System and Benefits

The AHCA conducted a competitive procurement to select LTC plans in each of the 11 regions in 2012. Contracts were awarded to health maintenance organizations (HMOs) and provider service networks (PSNs). Six non-specialty plans are currently contracted, including one PSN that is available in all 11 regions and one HMO that is in 10 regions. Recipients receive choice counseling services to assist them in selecting the plan that will best meet their needs.

Each plan under LTC is required to provide a minimum level of services. These services include:

- Adult companion care;
- Adult day health care;
- Assisted living;
- Assistive care services;
- Attendant care;
- Behavioral management;
- Care coordination and case management;
- Caregiver training;
- Home accessibility training;
- Home-delivered meals;
- Homemaker;
- Hospice;
- Intermittent and skilled nursing;
- Medical equipment and supplies;
- Medication administration;
- Medicaid management;
- Nursing facility;
- Nutritional assessment/risk reduction;
- Personal care;
- Personal emergency response system;
- Respite care;
- Therapies; and
- Non-emergency transportation.¹⁹

An LTC plan may elect to offer expanded benefits to its enrollees. Some of the approved expanded benefits within LTC include:

¹⁷ See s. 409.972, F.S.

¹⁸ Application for §1915(c) Home and Community-Based Services Waiver (Effective July 1, 2013), pp. 45-46, http://www.fdhc.state.fl.us/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/mma/LTC_1915c_Application.pdf (last visited Mar. 1, 2017).

¹⁹ See s. 409.98, F.S.

- Cellular phone service;
- Dental services;
- Emergency financial assistance;
- Hearing evaluation;
- Mobile personal emergency response system;
- Non-medical transportation;
- Over-the-counter medication and supplies;
- Support to transition out of a nursing facility;
- Vision services; and
- Wellness grocery discount.²⁰

LTC enrollees who are not eligible for Medicare also receive their medical services through an MMA plan. Some plans participate in both components in the same regions, and a recipient may choose the same managed care plan for both components, known as a comprehensive plan.

The AHCA's contract with the LTC plans include a statutorily required incentive payment adjustment to encourage increased utilization of HCBS services and a matching reduction in nursing facility placements. The incentive adjustment must be modified in each successive rate period in accordance with s. 409.983, F.S., as follows:

- (5) The agency shall make an incentive adjustment in payment rates to encourage the increased utilization of home and community-based services and commensurate reduction of institutional placement. The incentive adjustment shall be modified in each successive rate period during the first contract period, as follows:
- (a) A 2-percentage point shift in the first rating-setting period;
 - (b) A 2-percentage point shift in the second rate-setting period, as compared to the utilization mix at the end of the first rate-setting period;
- or
- (c) A 3-percentage point shift in the third rate-setting period, and in each successive rate-setting period during the first contract period, as compared to the utilization mix at the end of the immediately preceding rate-setting period.

The incentive adjustment shall continue in subsequent contract periods, at a rate of three percentage points per contract year as compared to the utilization mix at the end of the immediately preceding rate-setting period, until no more than 35 percent of the plan's enrollees' are placed in institutional settings. The agency shall annually report to the Legislature the actual change in the utilization mix of home and community-based services compared to institutional placements and provide a recommendation for utilization mix requirements for future contracts.

²⁰ Agency for Health Care Administration, MMA - Model Contract - Attachment I - Scope of Services (effective date Feb. 1, 2017) pp. 4-6, http://ahca.myflorida.com/medicaid/statewide_mc/pdf/Contracts/2017-02-01/02-01-17_MODEL_Attachment_I-Scope_of_Services.pdf (last visited Feb. 1, 2017).

During the first year of the LTC program, the AHCA reports a 12.1 percent decrease in the number of Medicaid recipients residing in a nursing facility.²¹

Reprocurement of the SMMC Contracts

The AHCA has started the process for the re-procurement of the managed care contracts for the SMMC program. The contracts were initially procured in 2012 and became effective in 2013 as 5-year contracts. An invitation to negotiate (ITN) will be released in the summer of 2017.²² The AHCA posted a request to receive non-binding Letters of Intent to Bid on its website with a deadline of February 13, 2017. The AHCA received 41 total responses from interested providers and plans for the ITN.²³ The databook will be posted to AHCA's website on March 30, 2017, and a public meeting to review the databook with the AHCA's contracted actuary is scheduled for April 12, 2017.

Americans with Disabilities Act

In June of 2009, the United States Supreme Court held that public entities must provide community-based services to persons with disabilities when such services would be appropriate; when affected persons are not opposed to such treatments; and when such services can be reasonably accommodated. To not provide the opportunity for persons with disabilities to receive services in the community constitutes discrimination in violation of Title II of the Americans with Disabilities Act (ADA).²⁴

The *Olmstead* decision is further supported through federal regulation, which states:

No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any public entity.²⁵

The Department of Justice's (DOJ) Civil Rights Division has conducted more than 40 *Olmstead* review cases in 25 states from 2009 to 2012, including cases in Florida.²⁶ Intervention from the DOJ may come through two different forms: A statement of interest where the DOJ intervenes in an existing lawsuit, but is not a party, or secondly, the DOJ investigates allegations and issues a

²¹ Agency for Health Care Adm., *Senate Bill 682 Analysis* (Feb. 13, 2017) (on file with Senate Committee on Health Policy).

²² Agency for Health Care Administration, *AHCA Announces Start of Re-Procurement Process for Statewide Medicaid Managed Care Program* (Feb. 3, 2017)

http://ahca.myflorida.com/Executive/Communications/Press_Releases/pdf/ReprocurementPressRelease.pdf (last visited: Mar. 21, 2017).

²³ Agency for Health Care Administration, *Statewide Medicaid Managed Care Program Non-Binding Letters of Intent Received by 2/13/2017, in response to Intent to Bid Posted 2/3/2017*,

http://ahca.myflorida.com/mc/statewide_mc/pdf/Intent_to_Bid_Responses.pdf (last visited Mar. 21, 2017).

²⁴ *Olmstead v. L.C.*, 527 U.S. 581(1999); 138 F.3d 893, affirm in part, vacated, and remanded.

²⁵ 28 CFR section 35.130(a) (2016).

²⁶ MaryBeth Musumeci and Henry Claypool, KFF.org, *Olmstead's Role in Community Integration for People with Disabilities under Medicaid: 15 Years after the Supreme Court's Olmstead's Decision* (June 18, 2014) <http://kff.org/report-section/olmsteads-role-in-community-integration-for-people-with-disabilities-under-medicaid-issue-brief> (last visited Mar. 3, 2017).

letter of findings and a settlement agreement. A DOJ investigation or intervention may also result in litigation to enforce a mandate.²⁷

In July 2013, the federal DOJ filed a lawsuit against the State of Florida alleging that the state had failed to move nearly 200 disabled children from nursing homes and institutional care to less restrictive environments in violation of the ADA.²⁸ The complaint included other allegations relating to the state's policies, procedures, reimbursement levels, method of service denials, and network capacity issues in its programs for children with significant medical needs.

A previous December 2011, investigation by the DOJ is detailed in the complaint, including notice that the parties met on several occasions to attempt resolution of the issues.²⁹ The DOJ complaint sought a declaratory judgement that the state had violated Title II of the ADA, to award compensatory damages, and any other relief as the court may find appropriate.³⁰ The case has been consolidated with a private lawsuit against the state alleging similar issues, that the state's practices and policies have unnecessarily placed children with disabilities in nursing facilities or placed them at risk of placement in nursing facilities.³¹ Litigation may also be brought by individuals to enforce a mandate.

The state has disputed the allegations in the DOJ complaint and argued that with the implementation of managed care and other policy changes in Medicaid, these issues are moot. The court has rejected these arguments thus far. Florida has most recently sought partial summary judgement to remove monetary damages as a legal remedy.³²

Guidance from the federal CMS stresses that all waiver programs for long-term care support programs, such as LTC, "must be delivered in the most integrated fashion, in the most integrated setting, and in a way that offers the greatest opportunities for active community and workforce participation."³³ Consistency with the *Olmstead* decision is found in every "essential element" of the guidance document.

The CMS guidance document also indicates that states will be expected to incorporate all services into the managed care plan capitation payment and that any exemptions will require comprehensive justification of how the goals of integration, efficiency and improved health and

²⁷ *Id.*

²⁸ *U.S. v. Florida*, No. 12-CV-60460, (SD. Fla., filed July 22, 2013).

²⁹ *U.S. v. Florida*, No. 12-CV-60460, (SD. Fla., filed July 22, 2013), 21.

³⁰ *Id.* at 23.

³¹ U.S. Dep't of Justice, *Americans with Disabilities Act - Olmstead Enforcement*, https://www.ada.gov/olmstead/olmstead_cases_list2.htm#fla (last visited Mar. 3, 2017); see *A.R. v. Dudek*, No. 12-CV 60460 (S.D. Fla. 2012).

³² U.S. Dep't of Justice, *Americans with Disabilities Act - Olmstead Enforcement*, https://www.ada.gov/olmstead/olmstead_cases_list2.htm#fla (last visited Mar. 3, 2017).

³³ Centers for Medicare and Medicaid Services, *Guidance to States Using 1115 Demonstrations or 1915(b) Waivers for Managed Long Term Services and Supports Programs* (5/20/13), <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Delivery-Systems/Downloads/1115-and-1915b-MLTSS-guidance.pdf>, p. 8, (last visited Mar. 3, 2017).

quality of life will be achieved.³⁴ Exclusion of any services will require routine re-assessment to ensure no violations of any federal laws, including the ADA or *Olmstead* requirements.³⁵

Prompt Payment of Claims

Florida's prompt pay laws govern payment of claims submitted to insurers and HMOs, including Medicaid managed care plans in accordance with ss. 641.315, 641.3155, and 641.513, F.S.³⁶ These provisions establish HMO provider contract requirements, prompt payment guidelines for provider payments, and requirements for the provision of emergency services and care for HMO enrollees. An HMO or insurer has 12 months after payment is made to a provider to make a claim for overpayment against the provider, if the provider is licensed under ch. 458, F.S., or ch. 459, F.S., (physicians), ch. 460, F.S., (chiropractors), ch. 461, F.S. (podiatrists), or ch. 466, F.S., (dentists). For all other types of providers, an insurer or HMO has up to 30 months after such payment to make a claim for overpayment, and a 40-day timeline for providers to pay, deny, or contest the claim for overpayment.³⁷ The law provides a process and timeline for providers to pay, deny, or contest the claim. Further, the law prohibits an insurer or HMO from retroactively denying a claim because of the ineligibility of an insured or subscriber more than one year after the date the claim is paid. The statutes do not include any provisions for the imposition of fines for non-compliance; however, the AHCA enforces these standards through the imposition of liquidated damages or sanctions, including fines.³⁸

III. Effect of Proposed Changes:

Section 1 amends s. 400.141, F.S., effective October 1, 2018, to add a requirement for nursing home facilities to confirm for the AHCA whether a nursing home facility resident who is a Medicaid recipient, or whose Medicaid eligibility is pending, is a candidate for home and community-based services (HCBS) under s. 409.965(3)(c), no later than the resident's 50th consecutive day of residency in the nursing home facility. The nursing home facility's notice to the AHCA is to assist in the identification of nursing home residents who may be eligible for both HCBS and the LTC component.

Section 2 amends s. 409.964, F.S., to remove obsolete dates relating to the submission of state plan amendments or waivers by a date certain, all of which have passed.

Section 3 amends s. 409.965, F.S., to create a new exemption from mandatory enrollment in the LTC program. Effective October 1, 2018, the section exempts persons who are assigned into level of care 1 under s. 409.983(4), F.S., and have resided in a nursing facility for 60 or more consecutive days. The exemption shall become effective on the first day of the first month after

³⁴ *Id.* at 12.

³⁵ *Id.*

³⁶ The prompt pay provisions apply to HMO contracts and major medical policies offered by individual and group insurers licensed under ch. 624, F.S., including preferred provider policies and an exclusive provider organization, and individual and group contracts that only provide direct payments to dentists.

³⁷ Section 641.3155, F.S., provide exceptions to this time limit in cases relating to fraud.

³⁸ Agency for Health Care Administration, *Senate Bill 682 Analysis* (Feb. 2, 2017), p. 6, (on file with the Senate Committee on Health Policy).

the person meets the criteria for the exemption. An exemption under this section has no bearing on an individual's eligibility for the MMA program.

An exemption from mandatory participation in the LTC program is also created for recipients receiving hospice care while residing in a nursing facility. The exemption shall become effective on the first day of the first month after the person meets the criteria for the exemption. An exemption under this section has no bearing on an individual's eligibility for the MMA program.

The effect of these exemptions is that nursing homes and hospices will be paid on a fee-for-service basis from the AHCA for these Medicaid recipients rather than receiving payment from the managed care plans.

Notwithstanding the exemptions provided above, the agency shall authorize the enrollment or continued enrollment of a Medicaid recipient in or into the LTC program who:

- Is eligible for the LTC program under s. 409.979, F.S., is 18 years of age or older, and is eligible for Medicaid by reason of disability;
- A person who is given priority enrollment for HCBS under s. 409.979(3)(f), F.S., or
- A person who has been identified as a candidate for HCBS by the nursing facility administrator and any long-term care plan case manager assigned to the resident.

The identification of the resident as a candidate for HCBS must be made in consultation with:

- The resident or the resident's legal representative or designee;
- The resident's personal physician or, if the resident does not have a personal physician, the facility's medical director; and
- A registered nurse who has participated in developing, maintaining, or reviewing the individual's resident care plan³⁹ as defined in s. 400.021, F.S.

Before determining that a nursing home resident is exempt from the long-term care managed care program, the agency is required to confirm whether the person has been identified as a candidate for HCBS services. If a nursing facility resident who has been identified as exempt is later identified as a candidate for HCBS, the nursing facility administrator must promptly notify the AHCA to ensure candidates are transitioned smoothly between programs, if appropriate.

Section 4 amends s. 409.967, F.S., relating to managed care plan accountability, to direct the AHCA to impose fines, and to authorize the imposition of other sanctions on a plan that willfully fails to comply with the managed care plan accountability provisions of ss. 641.315 (provider contracts), 641.3155 (prompt payment of claims), 641.513 (requirements for providing emergency services and care), and the added cross-referenced provision, s. 409.928(5), F.S., (long-term care managed care plan accountability provisions).

³⁹ A resident care plan is a written plan which must be reviewed not less than quarterly by a registered nurse, with participation by other staff and the resident or his or her legal representative, which includes, a comprehensive assessment of the needs of an individual resident; the type and frequency of services required to provide the necessary care for the resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being; a listing of services provided; and an explanation of goals.

Section 5 amends s. 409.979, F.S., relating to the pre-requisite criteria for eligibility for enrollees in the LTC program. This section clarifies that only those Medicaid recipients who are not exempt under s. 409.965, F.S., and who meet all of the criteria under this section may be eligible to receive long-term care services by participating in the LTC program. The amended language aligns the eligibility with the modifications made in Section 2 of the bill.

Section 6 amends s. 409.982, F.S., relating to provider networks of a long-term care managed care plan. This section requires the managed care plans to offer a network contract to all nursing homes and hospices for the first 12 months of a contract period in a region if that region was not served by that plan prior to the procurement, i.e., under the prior contract period. The nursing homes and hospices must meet the credentialing and recredentialing requirements specified in the plan's contract with the agency.

After the 12-month period, the plan may exclude any nursing home or hospice for failure to meet quality or performance standards; however, the plan must provide 30 days' written notice before the effective date to all affected recipients. If the plan excludes providers from its network or fails to renew a provider's contract, the AHCA must require a report from that plan which shows the quality or performance indicators used to exclude the provider and demonstrates how the provider failed to meet the plan's criteria.

Section 7 provides that except as otherwise provided in this act, and except for this section, which shall take effect upon becoming a law, this act shall take effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill changes how services are delivered for the LTC component when the new contracts are effective under the invitation to negotiate which will be conducted this summer. Changes in the delivery of benefits may impact private providers that are

currently providing services to recipients in the program now; however, that may have occurred regardless with any changeover in managed care contracts. There is no guarantee that the same providers will receive contracts in the same areas of the state.

The revisions to the prompt-pay section of the bill may impact the private sector to a larger degree if it results in providers and facilities receiving payment for services on a more expedient basis. The AHCA indicates that the statutes already permit the imposition of sanctions for noncompliance with the prompt pay requirements and that sanctions have been applied. A more aggressive enforcement effort may have been lacking due to the inability to determine from the available claims data that the prompt pay provision has been violated.

C. Government Sector Impact:

The agency maintains the fiscal position from its analysis of the bill in its original form, despite the significant differences between the original bill and the committee substitute. The agency reports that the bill will have a significant fiscal impact on the Medicaid program, resulting in millions of dollars lost in cost avoidance. It is believed these estimates are significantly overstated, however. The agency indicates that by exempting nursing facility services for those meeting specified criteria from the LTC managed care program, costs will re-appear from the previous LTC program at an estimated additional cost of \$200 million per year.

By contrast, however, the Florida Health Care Association estimates that by exempting nursing facility residents who have been in care over 60 days and meet specified criteria, avoidable costs related to case management (\$31.3 million) and administrative expenses (\$36.5 million) paid to managed care plans can be saved each year by the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.964, 409.965, 409.967, 409.979, and 409.982.

IX. Additional Information:

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

CS/CS by Appropriations on April 20, 2017:

The committee substitute makes a clarifying amendment to replace language that states the region was not served by the plan after the most recent procurement, to the plan was

not serving the regions immediately prior to the procurement in that region related to long-term managed care procurement.

CS by Health Policy on March 27, 2017:

The CS:

- Requires a nursing home to be prepared to confirm for the AHCA whether a nursing home resident, who is a Medicaid recipient or whose Medicaid eligibility is pending, is a candidate for HCBS, by the resident's 50th consecutive day of residency in the nursing home facility;
- Establishes the effective date for those exempted from the LTC managed care program;
- Provides that a nursing facility resident is not exempt from the LTC managed care program if the resident has been identified as a candidate for HCBS by the nursing facility administrator and any LTC case manager assigned to the resident;
- Establishes an identification and evaluation process for nursing facility residents for HCBS;
- Requires confirmation from the AHCA as to whether the person has been identified as a candidate for HCBS before a determination can be made that an individual is exempt from the LTC managed care program;
- Requires nursing facility administrators to promptly notify the AHCA of any exempt nursing home residents who have later been identified as candidates for HCBS; and
- Requires a plan to contract with all credentialed nursing homes and hospices if a new region is awarded under a new procurement cycle.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Stargel

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1 A bill to be entitled
 2 An act relating to Medicaid managed care; amending s.
 3 400.141, F.S.; requiring that nursing home facilities
 4 be prepared to provide confirmation within a specified
 5 timeframe to the Agency for Health Care Administration
 6 as to whether certain nursing home facility residents
 7 are candidates for certain services; amending s.
 8 409.964, F.S.; providing that covered services for
 9 long-term care under the Medicaid managed care program
 10 are those specified in part IV of ch. 409, F.S.;
 11 deleting an obsolete provision; amending s. 409.965,
 12 F.S.; providing that certain residents of nursing
 13 facilities are exempt from participation in the long-
 14 term care managed care program; providing for
 15 application of the exemption; providing that
 16 eligibility for the Medicaid managed medical
 17 assistance program is not affected by such provisions;
 18 providing conditions under which the exemption does
 19 not apply; requiring the agency to confirm whether
 20 certain persons have been identified as candidates for
 21 home and community-based services; requiring a certain
 22 notice to the agency by nursing facility
 23 administrators; amending s. 409.967, F.S.; requiring
 24 the agency to impose fines and authorizing other
 25 sanctions for willful failure to comply with specified
 26 payment provisions; amending s. 409.979, F.S.;
 27 providing that certain exempt Medicaid recipients are
 28 not required to receive long-term care services
 29 through the long-term care managed care program;

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30 amending s. 409.982, F.S.; revising parameters under
 31 which a long-term care managed care plan must contract
 32 with nursing homes and hospices; specifying that the
 33 agency must require certain plans to report
 34 information on the quality or performance criteria
 35 used in making a certain determination; providing
 36 effective dates.

37
 38 Be It Enacted by the Legislature of the State of Florida:

39
 40 Section 1. Effective October 1, 2018, paragraph (v) is
 41 added to subsection (1) of section 400.141, Florida Statutes, to
 42 read:

43 400.141 Administration and management of nursing home
 44 facilities.—

45 (1) Every licensed facility shall comply with all
 46 applicable standards and rules of the agency and shall:

47 (v) Be prepared to confirm for the agency whether a nursing
 48 home facility resident who is a Medicaid recipient, or whose
 49 Medicaid eligibility is pending, is a candidate for home and
 50 community-based services under s. 409.965(3)(c), no later than
 51 the resident's 50th consecutive day of residency in the nursing
 52 home facility.

53 Section 2. Section 409.964, Florida Statutes, is amended to
 54 read:

55 409.964 Managed care program; state plan; waivers.—The
 56 Medicaid program is established as a statewide, integrated
 57 managed care program for all covered services, including long-
 58 term care services as specified under this part. The agency

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 59 shall apply for and implement state plan amendments or waivers
 60 of applicable federal laws and regulations necessary to
 61 implement the program. Before seeking a waiver, the agency shall
 62 provide public notice and the opportunity for public comment and
 63 include public feedback in the waiver application. The agency
 64 shall hold one public meeting in each of the regions described
 65 in s. 409.966(2), and the time period for public comment for
 66 each region shall end no sooner than 30 days after the
 67 completion of the public meeting in that region. ~~The agency~~
 68 ~~shall submit any state plan amendments, new waiver requests, or~~
 69 ~~requests for extensions or expansions for existing waivers,~~
 70 ~~needed to implement the managed care program by August 1, 2011.~~

71 Section 3. Effective October 1, 2018, section 409.965,
 72 Florida Statutes, is amended to read:

73 409.965 Mandatory enrollment.—All Medicaid recipients shall
 74 receive covered services through the statewide managed care
 75 program, except as provided by this part pursuant to an approved
 76 federal waiver.

77 (1) The following Medicaid recipients are exempt from
 78 participation in the statewide managed care program:

79 (a)(1) Women who are eligible only for family planning
 80 services.

81 (b)(2) Women who are eligible only for breast and cervical
 82 cancer services.

83 (c)(3) Persons who are eligible for emergency Medicaid for
 84 aliens.

85 (2)(a) Persons who are assigned into level of care 1 under
 86 s. 409.983(4) and have resided in a nursing facility for 60 or
 87 more consecutive days are exempt from participation in the long-

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 88 term care managed care program. For a person who becomes exempt
 89 under this paragraph while enrolled in the long-term care
 90 managed care program, the exemption shall take effect on the
 91 first day of the first month after the person meets the criteria
 92 for the exemption. This paragraph does not affect a person's
 93 eligibility for the Medicaid managed medical assistance program.

94 (b) Persons receiving hospice care while residing in a
 95 nursing facility are exempt from participation in the long-term
 96 care managed care program. For a person who becomes exempt under
 97 this paragraph while enrolled in the long-term care managed care
 98 program, the exemption takes effect on the first day of the
 99 first month after the person meets the criteria for the
 100 exemption. This paragraph does not affect a person's eligibility
 101 for the Medicaid managed medical assistance program.

102 (3) Notwithstanding subsection (2):

103 (a) A Medicaid recipient who is otherwise eligible for the
 104 long-term care managed care program, who is 18 years of age or
 105 older, and who is eligible for Medicaid by reason of a
 106 disability is not exempt from the long-term care managed care
 107 program under subsection (2).

108 (b) A person who is afforded priority enrollment for home
 109 and community-based services under s. 409.979(3)(f) is not
 110 exempt from the long-term care managed care program under
 111 subsection (2).

112 (c) A nursing facility resident is not exempt from the
 113 long-term care managed care program under paragraph (2)(a) if
 114 the resident has been identified as a candidate for home and
 115 community-based services by the nursing facility administrator
 116 and any long-term care plan case manager assigned to the

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117 resident. Such identification must be made in consultation with
 118 the following persons:

119 1. The resident or the resident's legal representative or
 120 designee;

121 2. The resident's personal physician or, if the resident
 122 does not have a personal physician, the facility's medical
 123 director; and

124 3. A registered nurse who has participated in developing,
 125 maintaining, or reviewing the individual's resident care plan as
 126 defined in s. 400.021.

127 (d) Before determining that a person is exempt from the
 128 long-term care managed care program under paragraph (2) (a), the
 129 agency shall confirm whether the person has been identified as a
 130 candidate for home and community-based services under paragraph

131 (c). If a nursing facility resident who has been determined
 132 exempt is later identified as a candidate for home and
 133 community-based services, the nursing facility administrator
 134 shall promptly notify the agency.

135 Section 4. Paragraph (j) of subsection (2) of section
 136 409.967, Florida Statutes, is amended to read:

137 409.967 Managed care plan accountability.—

138 (2) The agency shall establish such contract requirements
 139 as are necessary for the operation of the statewide managed care
 140 program. In addition to any other provisions the agency may deem
 141 necessary, the contract must require:

142 (j) Prompt payment.—Managed care plans shall comply with
 143 ss. 641.315, 641.3155, and 641.513, and the agency shall impose
 144 finances, and may impose other sanctions, on a plan that willfully
 145 fails to comply with those sections or s. 409.982(5).

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146 Section 5. Subsection (1) of section 409.979, Florida
 147 Statutes, is amended to read:

148 409.979 Eligibility.—

149 (1) PREREQUISITE CRITERIA FOR ELIGIBILITY.—Medicaid
 150 recipients who meet all of the following criteria are eligible
 151 to receive long-term care services and, unless exempt under s.
 152 409.965, must receive long-term care services by participating
 153 in the long-term care managed care program. The recipient must
 154 be:

155 (a) Sixty-five years of age or older, or age 18 or older
 156 and eligible for Medicaid by reason of a disability.

157 (b) Determined by the Comprehensive Assessment Review and
 158 Evaluation for Long-Term Care Services (CARES) preadmission
 159 screening program to require nursing facility care as defined in
 160 s. 409.985(3).

161 Section 6. Subsections (1) and (2) of section 409.982,
 162 Florida Statutes, are amended to read:

163 409.982 Long-term care managed care plan accountability.—In
 164 addition to the requirements of s. 409.967, plans and providers
 165 participating in the long-term care managed care program must
 166 comply with the requirements of this section.

167 (1) PROVIDER NETWORKS.—Managed care plans may limit the
 168 providers in their networks based on credentials, quality
 169 indicators, and price. For the first 12 months of a contract
 170 period following a procurement for the long-term care managed
 171 care program under s. 409.981, if a plan is ~~period between~~
 172 ~~October 1, 2013, and September 30, 2014,~~ each selected for a
 173 region and that region was not served by the plan after the most
 174 recent procurement, the plan must offer a network contract to

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175 all nursing homes in that region which meet the recredentialing
 176 requirements and to all hospices in that region which meet the
 177 credentialing requirements specified in the plan's contract with
 178 the agency the following providers in the region:

179 ~~(a) Nursing homes.~~
 180 ~~(b) Hospices.~~
 181 ~~(c) Aging network service providers that have previously~~
 182 ~~participated in home and community-based waivers serving elders~~
 183 ~~or community service programs administered by the Department of~~
 184 ~~Elderly Affairs. After a provider specified in this subsection~~
 185 has actively participated in a managed care plan's network for
 186 12 months of active participation in a managed care plan's
 187 network, the plan may exclude the provider any of the providers
 188 named in this subsection from the plan's network for failure to
 189 meet quality or performance criteria. If a the plan excludes a
 190 provider from its network under this subsection the plan, the
 191 plan must provide written notice to all recipients who have
 192 chosen that provider for care. The notice must be provided at
 193 least 30 days before the effective date of the exclusion. The
 194 agency shall establish contract provisions governing the
 195 transfer of recipients from excluded residential providers. The
 196 agency shall require a plan that excludes a provider from its
 197 network or that fails to renew the plan's contract with a
 198 provider under this subsection to report to the agency the
 199 quality or performance criteria the plan used in deciding to
 200 exclude the provider and to demonstrate how the provider failed
 201 to meet those criteria.

202 (2) SELECT PROVIDER PARTICIPATION.—Except as provided in
 203 this subsection, providers may limit the managed care plans they

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204 join. Nursing homes and hospices that are enrolled Medicaid
 205 providers must participate in all eligible plans selected by the
 206 agency in the region in which the provider is located, with the
 207 exception of plans from which the provider has been excluded
 208 under subsection (1).

209 Section 7. Except as otherwise provided in this act and
 210 except for this section, which shall take effect upon this act
 211 becoming a law, this act shall take effect July 1, 2017.

Page 8 of 8

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
22nd District

COMMITTEES:

Appropriations Subcommittee on Finance and Tax,
Chair
Appropriations Subcommittee on Health and
Human Services, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic
Security

April 17, 2017

The Honorable Jack Latvala
Senate Committee on Appropriations, Chair
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Latvala:

I respectfully request that the following bills be placed on the next committee agenda:

- SB 360, related to *Middle School Study*; the House companion CS/HB 635 is on Special Order Calendar in the House.
- CS/SB 682, related to *Medicaid Managed Care*.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 22

Cc: Mike Hansen/ Staff Director
Alicia Weiss/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-20-17
Meeting Date

682
Bill Number (if applicable)

Topic Medicaid LTC

Amendment Barcode (if applicable)

Name Audrey Brown

Job Title President + CEO

Address 200 W College Ave
Street

Phone (800) 386-2904

City State Zip

Email audrey@fabplan.com

Speaking: For Against Information

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

Representing Florida Association of Health Plans

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)

4/20/17

Meeting Date

682

Bill Number (if applicable)

Topic Medicaid Managed Care

Amendment Barcode (if applicable)

Name Tom Parker

Job Title Director of Reimbursement

Address 307 W. Park Ave, Ste 100

Phone 224-3907

Street

Tallahassee FL 32301

Email tparker@fhca.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Health Care 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.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 800

INTRODUCER: Appropriations Committee; Banking and Insurance Committee; and Senators Broxson and Mayfield

SUBJECT: Medication Synchronization

DATE: April 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	<u>Favorable</u>
3.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 800 establishes coverage and payment requirements relating to medication synchronization. Medication synchronization is a process where a pharmacist coordinates or synchronizes refills for a patient who is taking multiple covered prescriptions, allowing them to be filled on the same day each month. Partial fills for less than the standard refill amount are often required in order to align all patient medications to the same refill date. Medication synchronization can be used as a tool to increase medication adherence.

The bill requires health insurers and health maintenance organizations (HMOs) that provide prescription drug coverage to offer insureds or members the option to align the refill dates of their prescription drugs through a network pharmacy at least once during the plan year. Controlled substances, prescription drugs dispensed in an unbreakable package, or a multidose unit of a prescription may not be partially filled for the purpose of aligning refill dates.

The bill requires health insurers and HMOs to pay a full dispensing fee to the network pharmacy unless otherwise agreed to by the plan and the network pharmacy. The health insurer or HMO must prorate cost-sharing obligations of the insured for each partial refill of a covered prescription drug dispensed to align refill dates. Notwithstanding these requirements for medication synchronization services, the bill deems certain existing medication synchronization programs, which provide for early refills, refill overrides, and access on the insurer or HMO's public website to information about the program as complying with the bill's requirements.

The fiscal impact of the bill on the Division of State Group Insurance is indeterminate.

The effective date of the bill is January 1, 2018.

II. Present Situation:

Medication synchronization is a process where a pharmacist coordinates or synchronizes refills for a patient who is taking multiple covered prescriptions, allowing them to be filled on the same day each month. This model is sometimes also referred to as the “appointment based model” as the patient has made a set appointment each month to pick up all of their prescriptions. Pharmacy staff will usually call the patient ahead of their appointment day to confirm that there have been no changes to the medications and that each prescription should be refilled.¹ Partial fills for less than the standard refill amount are often required initially in order to align all patient medications to the same refill date.

Medication synchronization can be used as a tool to increase medication adherence. Poor adherence to medication refills is most often an issue among individuals who suffer from chronic diseases. A Robert Wood Johnson Foundation study found that over 50 percent of all Americans suffer from at least one chronic disease, including such chronic diseases as cancer, diabetes, heart disease, hypertension, stroke, mental disorders, or pulmonary conditions.² The National Community Pharmacists Association estimates the cost of medication non-adherence to be in excess of \$290 billion annually.³

Federal Health Care and Access to Prescription Drugs

Medicare Part D

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003⁴ established a voluntary, outpatient, prescription drug benefit under Medicare Part D, effective January 1, 2006. Medicare Part D provides coverage through private prescription drug plans (PDPs) that offer only drug coverage, or through Medicare Advantage (MA) prescription drug plans (MA-PDs) that offer coverage as part of broader, managed care plans. The Centers for Medicare and Medicaid Services currently requires health plans administering Medicare Part D plans to prorate copayments associated with refill synchronization.⁵ A Medicare enrollee may request less than a one-month’s supply and pay the required copayment or coinsurance based on the quantity actually received.⁶

¹ American Pharmacists Association, *Appointment Based Model*, <http://www.pharmacist.com/appointment-based-model> (last visited Mar. 29, 2017).

² National Community Pharmacists Association, *Pharmacists Advancing Medication Adherence - Moving Forward on A Solid Foundation: Year One Progress Report*, p.3, available at <http://www.ncpa.co/pdf/smm/PAMA2012annualreport.pdf> (July 2011 - June 2012) (last visited Mar. 29, 2017).

³ *Id.*

⁴ Pub. L. No. 108-173.

⁵ Medicare.gov, *Copayment/coinsurance in drug plans* <https://www.medicare.gov/part-d/costs/copayment-coinsurance/drug-plan-copayments.html> (last visited Mar. 29, 2017).

⁶ *Id.*

Patient Protection and Affordable Care Act

On March 23, 2010, the federal Patient Protection and Affordable Care Act (PPACA) was signed into law.⁷ The PPACA requires health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA also mandates required essential health benefits,⁸ cost-sharing limits, rating and underwriting standards, and appeals of adverse benefit determinations.⁹

The PPACA requires issuers (insurers and HMOs) of qualified health plans (QHPs) to provide ten categories of essential health benefits (EHB), which includes prescription drugs.¹⁰ To be certified as a QHP, the insurer must also submit an application, follow established limits on cost sharing, and be certified by the federal Health Insurance Marketplace.¹¹ The deadline for insurers and HMOs to submit 2018 rates and forms to the Florida Office of Insurance Regulation (OIR) is May 3, 2017.

The QHPs must provide access to prescription drug benefits. An individual or small group health plan¹² providing QHPs must allow enrollees to obtain prescription drug benefits at in-network retail pharmacies, unless a drug is subject to restricted distribution by the U.S. Food and Drug Administration; or a drug requires special handling, provider coordination, or patient education that cannot be provided by a retail pharmacy.

A health plan may charge enrollees a different cost-sharing amount for obtaining a covered drug at a retail pharmacy, but all cost sharing will count towards the plan's annual limitation on cost sharing under 45 CFR 156.135. The health plans retain the flexibility to charge a lower cost-sharing amount when obtaining the drug at an in-network retail pharmacy. While this provision requires coverage of a drug at a network, retail pharmacy, for plans that do not have a network, the enrollee may go to any pharmacy to access his or her prescription drug benefit. In those situations, those plans would be deemed in compliance with this standard.

The issuers need only provide enrollees with the option to access drugs that are not exempted under 45 CFR s. 156.122(e), at a network retail pharmacy. The federal Department of Health and Human Services (HHS) notes that there are instances in which obtaining a drug through a mail-order pharmacy may not be a viable option, such as when an individual does not have a stable

⁷ The Patient Protection and Affordable Care Act (Pub. Law No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010.

⁸ 42 U.S.C. s.18022.

⁹ President Trump, Executive Order 13765, *Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal*, <https://www.whitehouse.gov/the-press-office/2017/01/20/executive-order-minimizing-economic-burden-patient-protection-and> (Jan. 20, 2017). President Trump issued an executive order indicating that it is the intent of his administration to seek the prompt repeal of PPACA. (last viewed Mar. 30, 2017).

¹⁰ See Center for Consumer Information & Insurance Oversight, *Information on Essential Health Benefits (EHB) Benchmark Plans* <https://www.cms.gov/ccio/resources/data-resources/ehb.html> (last visited Mar. 30, 2017) for Florida's benchmark plan.

¹¹ Center for Consumer Information & Insurance Oversight, *Qualified Health Plans*, <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/qhp.html> (last viewed Mar. 30, 2017).

¹² The Patient Protection and Affordable Care Act (Pub. L. 111–148). This regulation would not apply to large group plans, self-insured plans, transitional plans, or grandfathered plans.

living environment and does not have a permanent address, or when a retail pharmacy option better ensures that consumers can access their EHB prescription drug benefit on short notice.¹³

According to the HHS final rules, certain drugs have a Risk Evaluation and Mitigation Strategy (REMS) that includes Elements to Assure Safe Use that may require that pharmacies, practitioners, or health care settings that dispense the drug be specially certified and that may limit access to the drugs to certain health care settings.¹⁴ If the health plan finds it necessary to restrict access to a drug for either of the reasons listed above, it must indicate this restricted access on the formulary drug list that plans must make publicly available under 45 CFR s. 156.122(d).

Medication Synchronization

Medication synchronization is a tool that can improve adherence when patients are on a regular medication regimen. Medication synchronization can also reduce the administrative burden on patients who take multiple medications by reducing the number of refill dates. A retail or mail order pharmacy would coordinate all of a patient's prescription medications so that the drugs have the same refill date each month. The pharmacist initially performs a comprehensive review of the patient's medication regimen to determine the appropriateness of each therapy.

A partial fill can be required to align the patient's medications to a single refill date. Currently, some plans may not provide coverage for a refill for less than a 30-day supply. Patients may be required to pay a full month's copayment or coinsurance for less than a month's supply of medications. In some cases, pharmacies trying to submit a claim for adjusted quantities, will receive a "refill too soon" rejection, and the plan will deny coverage altogether, resulting in the patient paying out of pocket to cover the cost for the amount of medication needed to align their refills. Contingent on the plan, some plans will allow a limited number of overrides per year for special circumstances, such as a vacation supply, replacement of lost medication, or medication synchronization. Regarding dispensing fees, some plans will prorate the dispensing fee payment to the pharmacy that reflects a partial refill of a prescription.

Staff conducted a limited survey of states and found that approximately 23 states¹⁵ have considered medication synchronization legislation.¹⁶ Some states place restriction on the types of drugs that may be eligible for synchronization or limited synchronization to those with chronic conditions. For example, Ohio requires that the medication must meet the following criteria:

- Cannot have quantity limits, dose optimization criteria, or other requirements that would be violated if synchronized;
- Not have special handling or sourcing needs, as determined by the policy, contract, or agreement, that require a single, designated pharmacy to fill or refill the prescription;

¹³ Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016, 80 FR 10820, 10821 (Feb. 27, 2015).

¹⁴ FDA requires a Risk Evaluation and Mitigation Strategies (REMS) for certain drugs to ensure that the benefits of a drug or biological product outweigh its risks. The FDA's list of currently approved REMS is available at: <http://www.accessdata.fda.gov/scripts/cder/remis/index.cfm> (last viewed Mar. 30, 2017).

¹⁵ See National Conference of State Legislators database available at <http://www.ncsl.org/research/health/prescription-drug-statenet-database.aspx> (last viewed Mar. 30, 2017).

¹⁶ See <http://www.ncpanet.org/newsroom/ncpa's-blog---the-dose/2015/06/18/states-take-the-lead-in-making-med-synchronization-easier> (last viewed Mar. 30, 2017).

- Be formulated so that the quantity or amount dispensed can be effectively divided in order to achieve synchronization;
- Not be a schedule II controlled substance, opiate, or benzodiazepine.¹⁷

Likewise, Kentucky law provides that a synchronized medication may not be a Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone.¹⁸ Nevada law states that the synchronization provisions do not apply to unit-of-use packaging for which synchronization is not practicable or to a controlled substance.¹⁹ In Maine, prescriptions for solid oral doses of antibiotics and solid oral doses that are dispensed in their original container as indicated in the federal Food and Drug Administration prescribing information or are customarily dispensed in their original packaging to assist a patient with compliance are excluded from the medication synchronization requirements.²⁰

Regulation of Insurance in Florida

The Florida Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, HMOs, and other risk-bearing entities.²¹ The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S.²² Before receiving a certificate of authority from the OIR, an HMO must obtain a Health Care Provider Certificate from the agency.

Florida's State Group Health Insurance Program

Under the authority of s. 110.123, F.S., the Department of Management Services (DMS), through the Division of State Group Insurance, administers the state group health insurance program under a cafeteria plan.²³ To administer the state group health insurance program, the DMS contracts with third party administrators for self-insured health plans, insured HMOs, and a pharmacy benefits manager (PBM), CaremarkPCS Health, L.L.C. (CVS/Caremark) for the state employees' self-insured prescription drug program.

III. Effect of Proposed Changes:

Sections 1 and 2 require health insurers and HMOs providing prescription drug coverage to offer medication synchronization services on all policies entered into or renewed on or after January 1, 2018. The medication synchronization services must allow insureds or members the option to align the refill dates of their prescription drugs through a network pharmacy at least once in a plan year.

¹⁷ See 2015 Ohio Act at

https://custom.statenet.com/public/resources.cgi?id=ID:bill:OH2015000H116&ciq=ncslde3&client_md=af8c8e805f456317976bcd68b3cfee7e&mode=current_text (last viewed Mar. 21, 2017).

¹⁸ See KRS 304.17A-165.

¹⁹ Chapter 689A.330 of NRS.

²⁰ See <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0284&item=3&snum=127> (last viewed Mar. 30, 2017).

²¹ Section 20.121(3)(a), F.S.

²² Section 641.21(1), F.S.

²³ 26 U.S.C. s. 125.

The bill limits the types of prescription drugs eligible for a partial refill under medication synchronization. It prohibits a partial fill to align refill dates for the following prescription drugs:

- Controlled substances;
- Prescription drugs dispensed in unbreakable packages; or
- Multi-dose units of prescription drugs.

Additionally, the bill requires health insurers and HMOs to pay a full dispensing fee to the network pharmacy unless otherwise agreed to by the plan and the network pharmacy. The health insurer or HMO must prorate cost-sharing obligations of the insured for each partial refill of a covered prescription drug dispensed to align refill dates.

Notwithstanding these requirements for medication synchronization services, the bill deems certain existing medication synchronization programs, which provide for early refills, refill overrides, and access on the insurer or HMO's public website to information about the program as complying with the bill's requirements.

The provisions of these sections apply to policies or contracts issued on or after January 1, 2018.

Section 3 provides this act takes effect January 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Implementation of medication synchronization may improve medication adherence for patients, particularly patients with chronic conditions who are on multiple-medication regimens.

According to DMS, for a preferred provider organization enrollee filling maintenance medications at a retail pharmacy, any partial fill would count as one of their three 30-day fills at retail before being required to use 90-day retail or 90-day mail order.²⁴

Insurers and HMOs may incur additional costs associated with full dispensing fees associated with partial refills of covered drugs. Some insurers may also incur costs to revise their forms to comply with the bill.²⁵

C. Government Sector Impact:

Local governments may experience an indeterminate increase in pharmacy dispensing fees if they are required to pay full dispensing fees for partial refills.

DMS/Division of State Group Insurance

Currently, the program does not allow for the synchronization of medication, if that synchronization requires an early refill. The fiscal impact on the program is unknown.²⁶

The DMS will need to make changes to the summary plan description currently used by the SGI Program's PBM to allow prescriptions to be filled at any point for medication synchronization.²⁷ The DMS will also need to develop and incorporate a proration schedule outlining and creating prorated copayment amounts for medication synchronization.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 641.31 of the Florida Statutes.

This bill creates section 627.64196 of the Florida Statutes.

²⁴ Department of Management Services, *Senate Bill 800 Analysis* (Mar. 16, 2017) (on file with the Senate Committee on Health Policy).

²⁵ Office of Insurance Regulation, *Senate Bill 800 Analysis* (Feb. 13, 2017) (on file with the Senate Appropriations Subcommittee on General Government).

²⁶ Department of Management Services, *Senate Bill 800 Analysis* (Mar. 16, 2017) (on file with the Senate Appropriations Subcommittee on General Government).

²⁷ *Id.*

²⁸ *Id.*

IX. Additional Information:

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

CS/CS by Appropriations on April 20, 2017:

The committee substitute deems existing medication synchronization programs, which provide for early refills, refill overrides, and access on the insurer or HMO's public website to information about the program as complying with the bill's requirements.

CS by Banking and Insurance: on March 27, 2017:

The CS:

- Requires health insurers and HMOs that provide covered prescription drugs to offer insureds or members the option to use medication synchronization at least once in a plan year at a network pharmacy.
- Requires such health insurer and HMO to implement a process for dispensing drugs for the purpose of aligning the refill dates of such drugs.
- Requires health insurers and HMOs to pay a full dispensing fee to the network pharmacy for each partial refill of a covered drug dispensed to align refill dates, unless otherwise agreed to by the plan and the network pharmacy at the time of the insured or member requests medication synchronization.
- Excludes certain prescription drugs from being partially filled for the purpose of aligning refill drugs.
- Applies to policies or contracts renewed or entered into on or after January 1, 2018.

- B. **Amendments:**

None.



743118

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Broxson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 27 - 74

and insert:

627.64196 Medication synchronization.-

(1) (a) A health insurer issuing or delivering in this state an individual or a group health insurance policy that provides prescription drug coverage shall offer medication synchronization to allow an insured to align at least once in a plan year the refill dates for prescription drugs covered by the



743118

11 policy. The insurer shall implement a process for dispensing
12 prescription drugs to an insured for the purpose of aligning the
13 refill dates of such drugs, and such medication synchronization
14 may be available only through a network pharmacy. A controlled
15 substance, a prescription drug dispensed in an unbreakable
16 package, or a multidose unit of a prescription drug may not be
17 partially filled for the purpose of aligning refill dates. The
18 insurer shall pay a full dispensing fee to the network pharmacy
19 for each partial refill of a covered prescription drug dispensed
20 to align refill dates, unless otherwise agreed to by the plan
21 and the network pharmacy at the time an insured requests
22 medication synchronization. The insurer shall prorate the cost-
23 sharing obligations of the insured for each partial refill of a
24 covered prescription drug dispensed to align refill dates. This
25 section applies to policies renewed or entered into on or after
26 January 1, 2018.

27 (b) A health insurer issuing or delivering in this state an
28 individual or a group health insurance policy that provides
29 prescription drug coverage shall make available at its public
30 website the terms and conditions of its medication
31 synchronization program.

32 (2) Notwithstanding subsection (1), an alternate process
33 used by an insurer which includes early refill dates, refill
34 overrides, and access on the insurer's public website to the
35 terms and conditions of such a process is deemed to comply with
36 the requirements of this section.

37 Section 2. Subsection (44) is added to section 641.31,
38 Florida Statutes, to read:

39 641.31 Health maintenance contracts.—



743118

40 (44) (a) A health maintenance organization issuing or
41 delivering in this state a health maintenance contract that
42 provides prescription drug coverage shall offer medication
43 synchronization to allow a subscriber to align at least once in
44 a plan year the refill dates for prescription drugs covered by
45 the health maintenance contract. The health maintenance
46 organization shall implement a process for dispensing
47 prescription drugs to a subscriber for the purpose of aligning
48 the refill dates of such drugs, and such medication
49 synchronization may be available only through a network
50 pharmacy. A controlled substance, a prescription drug dispensed
51 in an unbreakable package, or a multidose unit of a prescription
52 drug may not be partially filled for the purpose of aligning
53 refill dates. The health maintenance organization shall pay a
54 full dispensing fee to the network pharmacy for each partial
55 refill of a covered prescription drug dispensed to align refill
56 dates, unless otherwise agreed to by the plan and the network
57 pharmacy at the time a subscriber requests medication
58 synchronization. The health maintenance organization shall
59 prorate the cost-sharing obligations of the subscriber for each
60 partial refill of a covered prescription drug dispensed to align
61 refill dates. This subsection applies to policies renewed or
62 entered into on or after January 1, 2018.

63 (b) A health maintenance organization issuing or delivering
64 in this state a contract that provides prescription drug
65 coverage shall make available at its public website the terms
66 and conditions of its medication synchronization program.

67 (c) Notwithstanding paragraphs (a) and (b), an alternate
68 process used by a health maintenance organization which includes



743118

69 early refill dates, refill overrides, and access on the health
70 maintenance organization's public website to the terms and
71 conditions of such a process is deemed to comply with the
72 requirements of this section.

73

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

75 And the title is amended as follows:

76 Delete line 20

77 and insert:

78 obligations; providing applicability; requiring such
79 insurers and health maintenance organizations to make
80 available on their websites the terms and conditions
81 of their medication synchronization programs;
82 providing that specified alternate processes used by
83 insurers and health maintenance organizations comply
84 with medication synchronization requirements;
85 providing an



286812

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Broxson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 27 - 74

and insert:

627.64196 Medication synchronization.-

(1) A health insurer issuing or delivering in this state an individual or a group health insurance policy that provides prescription drug coverage shall offer medication synchronization to allow an insured to align at least once in a plan year the refill dates for prescription drugs covered by the



286812

11 policy. The insurer shall implement a process for dispensing
12 prescription drugs to an insured for the purpose of aligning the
13 refill dates of such drugs, and such medication synchronization
14 may be available only through a network pharmacy. A controlled
15 substance, a prescription drug dispensed in an unbreakable
16 package, or a multidose unit of a prescription drug may not be
17 partially filled for the purpose of aligning refill dates. The
18 insurer shall pay a full dispensing fee to the network pharmacy
19 for each partial refill of a covered prescription drug dispensed
20 to align refill dates, unless otherwise agreed to by the plan
21 and the network pharmacy at the time an insured requests
22 medication synchronization. The insurer shall prorate the cost-
23 sharing obligations of the insured for each partial refill of a
24 covered prescription drug dispensed to align refill dates. This
25 section applies to policies renewed or entered into on or after
26 January 1, 2018.

27 (2) Notwithstanding subsection (1), an alternate process
28 used by an insurer which includes early refill dates, refill
29 overrides, and access on the insurer's public website to the
30 terms and conditions of such a process is deemed to comply with
31 the requirements of this section.

32 Section 2. Subsection (44) is added to section 641.31,
33 Florida Statutes, to read:

34 641.31 Health maintenance contracts.-

35 (44) (a) A health maintenance organization issuing or
36 delivering in this state a health maintenance contract that
37 provides prescription drug coverage shall offer medication
38 synchronization to allow a subscriber to align at least once in
39 a plan year the refill dates for prescription drugs covered by



286812

40 the health maintenance contract. The health maintenance
41 organization shall implement a process for dispensing
42 prescription drugs to a subscriber for the purpose of aligning
43 the refill dates of such drugs, and such medication
44 synchronization may be available only through a network
45 pharmacy. A controlled substance, a prescription drug dispensed
46 in an unbreakable package, or a multidose unit of a prescription
47 drug may not be partially filled for the purpose of aligning
48 refill dates. The health maintenance organization shall pay a
49 full dispensing fee to the network pharmacy for each partial
50 refill of a covered prescription drug dispensed to align refill
51 dates, unless otherwise agreed to by the plan and the network
52 pharmacy at the time a subscriber requests medication
53 synchronization. The health maintenance organization shall
54 prorate the cost-sharing obligations of the subscriber for each
55 partial refill of a covered prescription drug dispensed to align
56 refill dates. This subsection applies to contracts renewed or
57 entered into on or after January 1, 2018.

58 (b) Notwithstanding paragraph (a), an alternate process
59 used by a health maintenance organization which includes early
60 refill dates, refill overrides, and access on the health
61 maintenance organization's public website to the terms and
62 conditions of such a process is deemed to comply with the
63 requirements of this subsection.

64
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 line 20

68 and insert:



286812

69 obligations; providing applicability; providing that
70 specified alternate processes used by health insurers
71 and health maintenance organizations comply with
72 medication synchronization requirements; providing an

By the Committee on Banking and Insurance; and Senators Broxson and Mayfield

597-02936-17

2017800c1

1 A bill to be entitled
 2 An act relating to medication synchronization;
 3 creating s. 627.64196, F.S., and amending s. 641.31,
 4 F.S.; requiring health insurers and health maintenance
 5 organizations, respectively, which issue or deliver
 6 certain policies or contracts to offer medication
 7 synchronization to allow insureds and subscribers to
 8 align refill dates for certain drugs at least once in
 9 a plan year; requiring such insurers and health
 10 maintenance organizations to implement a process for
 11 aligning such dates; authorizing medical
 12 synchronization only through a network pharmacy;
 13 providing exceptions from partial filling for the
 14 purpose of aligning refill dates; requiring such
 15 insurers and health maintenance organizations to pay,
 16 except under certain circumstances, the full
 17 dispensing fee for a partial refill to align refill
 18 dates; requiring such insurers and health maintenance
 19 organizations to prorate certain cost-sharing
 20 obligations; providing applicability; providing an
 21 effective date.
 22
 23 Be It Enacted by the Legislature of the State of Florida:
 24
 25 Section 1. Section 627.64196, Florida Statutes, is created
 26 to read:
 27 627.64196 Medication synchronization.—A health insurer
 28 issuing or delivering in this state an individual or a group
 29 health insurance policy that provides prescription drug coverage

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

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30 shall offer medication synchronization to allow an insured to
 31 align at least once in a plan year the refill dates for
 32 prescription drugs covered by the policy. The insurer shall
 33 implement a process for dispensing prescription drugs to an
 34 insured for the purpose of aligning the refill dates of such
 35 drugs, and such medication synchronization may be available only
 36 through a network pharmacy. A controlled substance, a
 37 prescription drug dispensed in an unbreakable package, or a
 38 multidose unit of a prescription drug may not be partially
 39 filled for the purpose of aligning refill dates. The insurer
 40 shall pay a full dispensing fee to the network pharmacy for each
 41 partial refill of a covered prescription drug dispensed to align
 42 refill dates, unless otherwise agreed to by the plan and the
 43 network pharmacy at the time an insured requests medication
 44 synchronization. The insurer shall prorate the cost-sharing
 45 obligations of the insured for each partial refill of a covered
 46 prescription drug dispensed to align refill dates. This section
 47 applies to policies renewed or entered into on or after January
 48 1, 2018.
 49 Section 2. Subsection (44) is added to section 641.31,
 50 Florida Statutes, to read:
 51 641.31 Health maintenance contracts.—
 52 (44) A health maintenance organization issuing or
 53 delivering in this state a health maintenance contract that
 54 provides prescription drug coverage shall offer medication
 55 synchronization to allow a subscriber to align at least once in
 56 a plan year the refill dates for prescription drugs covered by
 57 the health maintenance contract. The health maintenance
 58 organization shall implement a process for dispensing

Page 2 of 3

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

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59 prescription drugs to a subscriber for the purpose of aligning
60 the refill dates of such drugs, and such medication
61 synchronization may be available only through a network
62 pharmacy. A controlled substance, a prescription drug dispensed
63 in an unbreakable package, or a multidose unit of a prescription
64 drug may not be partially filled for the purpose of aligning
65 refill dates. The health maintenance organization shall pay a
66 full dispensing fee to the network pharmacy for each partial
67 refill of a covered prescription drug dispensed to align refill
68 dates, unless otherwise agreed to by the plan and the network
69 pharmacy at the time a subscriber requests medication
70 synchronization. The health maintenance organization shall
71 prorate the cost-sharing obligations of the subscriber for each
72 partial refill of a covered prescription drug dispensed to align
73 refill dates. This subsection applies to policies renewed or
74 entered into on or after January 1, 2018.

75 Section 3. This act shall take effect January 1, 2018.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/10/17

Meeting Date

CS/SB 800

Bill Number (if applicable)

Topic Medication Synchronization

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title Associate State Director

Address 200 W. College Ave, Ste 304

Phone 850-228-6387

Street

Jel FL 32301

City

State

Zip

Email dobarker@aarp.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)

4/20

Meeting Date

800

Bill Number (if applicable)

Topic Med Synch (Support Bill)

Amendment Barcode (if applicable)

Name Chris Hansen

Job Title Ballard Partners

Address _____

Phone 577-0444

Street

Tallahassee FL 32301

City

State

Zip

Email Chansen@ballardFL.com

Speaking: For Against Information

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

Representing Walgreens

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 Appropriations

BILL: PCS/CS/SB 890 (857170)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Pre-K - 12 Education); Education Committee; and Senators Bean and Montford

SUBJECT: Florida Endowment for Vocational Rehabilitation

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 890 extends the repeal date for the Florida Endowment Foundation for Vocational Rehabilitation (Foundation), which serves as the direct-support organization of the Division of Vocational Rehabilitation within the Florida Department of Education from October 1, 2017 to October 1, 2022.

The bill increases transparency and oversight of the DSO by requiring the DSO to:

- Account for state and private funds separately.
- Use private funds for administrative expenses, which are limited to fifteen percent of the estimated expenditures.
- Publish additional information on its website.
- Hold a competitive solicitation process for any allocation of funds for research, advertising or consulting. The bill has no fiscal impact.

The bill takes effect July 1, 2017.

II. Present Situation:

Citizen-Support Organizations and Direct-Support Organizations

Citizen-support organizations (CSOs) and direct-support organization (DSOs) are statutorily created non-profit organizations¹ authorized to carry out specific tasks in support of public entities or public causes.² The function and purpose of a CSO or DSO are prescribed by an enacting statute and a written contract with the agency the CSO or DSO supports.³

CSO and DSO Transparency and Reporting Requirements

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs.⁴ Specifically, the law requires each CSO and DSO to annually submit the following information to the appropriate agency by August 1:⁵

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's ethics code; and
- A copy of the organization's most recent Internal Revenue Service (IRS) Form 990.⁶

Each agency receiving information from a CSO or DSO pursuant to law must make such information available to the public through the agency's website.⁷ If the organization maintains a website, the agency's website must provide a link to the organization's website.⁸ Any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting the required information to the agency as specified in law.⁹ If a CSO or DSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate any contract between the agency and the CSO or DSO.¹⁰

By August 15 of each year, the agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) the information submitted by each CSO or DSO along with the agency's recommendation and supporting rationale to continue, terminate, or modify the agency's association with the CSO or DSO.¹¹

¹ Chapter 617, F.S.

² *E.g.*, ss. 1009.983 and 413.0111, F.S.

³ *See* ss. 14.29(9)(a), 16.616(1), and 258.015(1), F.S. *See also* Rules of the Florida Auditor General, *Audits of Certain Nonprofit Organizations* (effective June 30, 2016), Rule 10.720(1)(b) and (d), available at http://www.myflorida.com/audgen/pages/pdf_files/10_700.pdf.

⁴ Section 3, ch. 2014-96, L.O.F

⁵ Section 20.058(1), F.S.

⁶ The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501. 26 C.F.R. 1.6033-2.

⁷ Section 20.058(2), F.S.

⁸ *Id.*

⁹ Section 20.058(4), F.S.

¹⁰ *Id.*

¹¹ *Id.* at (3).

Any law creating, or authorizing the creation of a CSO or DSO must state that the authorization for the organization repeals on October 1 of the 5th year after enactment unless reviewed and reenacted by the Legislature. CSOs and DSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019.¹²

CSO and DSO Audit Requirements

Section 215.981, F.S., requires each CSO and DSO with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.¹³ An independent certified public accountant in accordance with rules adopted by the Auditor General must conduct the audit. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports.¹⁴ Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of a CSO's or DSO's accounts and records.¹⁵

CSO and DSO Ethics Code Requirement

Section 112.3251, F.S., requires a CSO or DSO to adopt a code of ethics. The code of ethics must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S.¹⁶ A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must post its code of ethics on its website.¹⁷

Division of Vocational Rehabilitation

The Division of Vocational Rehabilitation (Division) is one of several divisions within the Department of Education (DOE).¹⁸ The Division is the administrative unit designated at the state level to ensure compliance with the Vocational Rehabilitation Act of 1973, as amended.¹⁹ The Division's mission is "to help people with disabilities find and maintain employment and enhance their independence."²⁰ Vocational Rehabilitation (VR) is a federal-state program that helps people who have physical or mental disabilities find and maintain meaningful careers.²¹

Florida Endowment Foundation for Vocational Rehabilitation

In 1990, the Legislature created the Florida Endowment Foundation for Vocational Rehabilitation (Foundation or The Able Trust) as a direct-support organization of the Division

¹² *Id.* at (5).

¹³ The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

¹⁴ Section 215.981(1), F.S.

¹⁵ Section 11.45(3), F.S.

¹⁶ Some of the standards of conduct and disclosures in ss. 112.313 and 112.3143(2), F.S., include misuse of public position, solicitation or acceptance of gifts, unauthorized compensation, and voting conflicts.

¹⁷ Section 112.3251, F.S.

¹⁸ Section 20.15(3)(d), F.S.

¹⁹ Section 413.202, F.S.

²⁰ Florida Division of Vocational Rehabilitation, <http://www.rehabworks.org/> (last visited March 20, 2017).

²¹ Florida Division of Vocational Rehabilitation, *Frequently Asked Questions*, <http://www.rehabworks.org/faq.shtml> (last visited March 20, 2017).

within the DOE for the purpose of encouraging public and private support to enhance vocational rehabilitation and employment of citizens who are disabled.²²

The Foundation conducts business as The Able Trust,²³ which operates under contract with the Division to exclusively raise funds; submit requests and receive grants from the Federal Government, the state, private foundations, and individuals; to receive, hold, and administer property. Additionally, The Able Trust provides funds for the benefit of the rehabilitation programs approved by the Foundation's board of directors.²⁴

For 26 years, the Foundation has gone beyond the traditional direct-support organization role of supporting activities of the Division by developing and expanding statewide programs to move people with disabilities into the workforce.²⁵

Currently, the authorizing statute for the Foundation is scheduled for repeal October 1, 2017, unless reviewed and reenacted by the Legislature.²⁶

Legislative Review: Findings and Recommendations

Senate professional staff reviewed documents related to the Foundation for compliance with the authorizing and accountability statutes. Findings and recommendations are summarized below.

Foundation's Compliance under Authorizing Statute

The Foundation:²⁷

- Must be incorporated as a not-for-profit corporation under law, which requires initial filing of articles of incorporation and subsequent filing of sworn annual reports with the Department of State.²⁸
- Must be organized and operate exclusively for the benefit of the rehabilitation programs approved by the Board of Directors of the Foundation.
- Must be approved by the Division to operate for the benefit and best interest of the state.
- Is subject to the public meetings and public records requirements in statute.²⁹
- Must comply with law which requires each DSO and CSO with annual expenditures in excess of \$100,000 to annually provide independent financial audit.³⁰

The Foundation appears to comply with the authorizing statutory requirements.

²² Section 9, ch. 90-330, L.O.F., codified as s. 413.615(5), F.S.

²³ The Able Trust is another name for the Foundation, essentially the trade name of the Foundation.²³ Email, Florida Department of Education (Feb. 2, 2017).

²⁴ Section 413.615(5)(b), F.S.

²⁵ Email, Florida Department of Education (Feb. 2, 2017).

²⁶ Section 413.615(14), F.S.

²⁷ Section 413.615(5), F.S.

²⁸ Section 413.615(5)(a), F.S. Not-for-profit corporations are incorporated under Chapter 617, F.S.; Articles of Incorporation are required by s. 617.0202, F.S., and annual reports are required by s. 617.1622, F.S.

²⁹ Section 413.615(7), F.S. See also s. 24, Art. I of the State Constitution, ch. 119, F.S., and s. 286.011, F.S. Section 413.615(7), F.S. exempts certain information from public record and meetings laws.

³⁰ Section 215.981, F.S.

Foundation's Compliance under Accountability Statute

- Each DSO is required to annually provide to the appropriate agency specified information by August 1.³¹
 - **Finding:** The Foundation appears to have provided the required information to the DOE by the statutory deadline.³²
- Each agency must submit an annual report by August 15 of each year with the information received from the DSO or CSO which contains a recommendation for continuing, terminating, or modifying the agency's association with the DSO or CSO.³³
 - **Finding:** The DOE submitted its annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OPPAGA, along with the DOE's recommendation and rationale for continuing the Foundation by the statutory deadline.³⁴
- Each agency must make the information received from each DSO or CSO available to the public through the agency's website.³⁵ If the DSO or CSO maintains its own website, the agency must provide a link on its website to the DSO's or CSO's website.³⁶
 - **Finding:** The required annual report has been posted to Florida's Fiscal Portal.³⁷ A link to the Florida Fiscal Portal is available on the DOE's website.³⁸ However, a link to the Foundation's website is not found on either the DOE's or the Division's website.
 - **Recommendation:** The DOE or the Division should create a link on the DOE or the Division's website to the Foundation's website.
- Any contract between an agency and a DSO or CSO must be contingent upon the DSO or CSO's submission and posting of the required information.³⁹ If the DSO or CSO fails to submit the required information for two consecutive years, the agency head must terminate the contract.⁴⁰
 - **Finding:** The Foundation appears to have submitted the required information for the last two consecutive years. However, neither the Foundation, nor the DOE or the Division, appear to have posted the information to its respective website as required.
 - **Recommendation:** Either the DOE or the Division, or the Foundation should post the statutorily required information to its respective website.

³¹ Section 20.058(1), F.S. See pg. 2 of this analysis.

³² Email, Florida Department of Education (Nov. 15, 2016); Florida Fiscal Portal, Department of Education's 2016-2017 Annual Report on Citizen-Support and Direct-Support Organizations, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=14514&DocType=PDF>, at 3-4.

³³ Section 20.058(3), F.S.

³⁴ Email, Florida Department of Education (Jan. 11, 2017); Florida Fiscal Portal, Department of Education's 2016-2017 Annual Report on Citizen-Support and Direct-Support Organizations, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=14514&DocType=PDF>, at 3-4.

³⁵ Section 20.058(2), F.S.

³⁶ *Id.*

³⁷ Email, Florida Department of Education (Jan. 11, 2017). Florida Fiscal Portal, Department of Education's 2014-2015 Annual Report on Citizen-Support and Direct-Support Organizations (8/5/14), available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=10642&DocType=PDF>, at 4; Florida Fiscal Portal, Department of Education's 2015-2016 Annual Report on Citizen-Support and Direct-Support Organizations (8/1/15), available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=13513&DocType=PDF>, at 5; Florida Fiscal Portal, Department of Education's 2016-2017 Annual Report on Citizen-Support and Direct-Support Organizations (8/1/16), available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=14514&DocType=PDF>, at 5.

³⁸ Email, Florida Department of Education (Jan. 13, 2017).

³⁹ Section 20.058(4), F.S.

⁴⁰ *Id.*

III. Effect of Proposed Changes:

This bill extends the repeal date for the Florida Endowment Foundation for Vocational Rehabilitation (Foundation or The Able Trust), which serves as the direct-support organization of the Division of Vocational Rehabilitation within the Florida Department of Education from October 1, 2017 to October 1, 2022.

The bill increases transparency and oversight of the DSO by requiring the DSO to:

- Account for state and private funds separately.
- Use private funds for administrative expenses, which are limited to fifteen percent of the estimated expenditures.
- Publish additional information on its website including the annual audit, annual report, contracting information and information on each program, gift, or grant funded by the Foundation.
- Hold a competitive solicitation process for any allocation of funds for research, advertising or consulting.
- Prohibit the use of state funds to fund events for private donors, potential donors or to honor supports.

The extension of the repeal date will provide for the continuation of programs administered by The Able Trust which include, but are not limited to:⁴¹

Youth Programs

The Able Trust's High School High Tech program has 43 program sites in 40 Florida counties.⁴² The program provides leadership training, career direction, community involvement, and education to 1,500-2,000 students per year.⁴³ The current cost to the state's budget for this program is \$275 per student, which covers slightly more than one-fourth of the total program costs.⁴⁴

The Able Trust's Florida Youth Leadership Program is a week-long leadership training program that takes place every summer at Florida State University, and advances high school juniors and seniors with disabilities and young adult job seekers toward a career path. There is also a related alumni association, established a year ago.⁴⁵

Grant Programs

The Able Trust works with community organizations throughout the state to help them assist Floridians with disabilities in their area to gain employment.⁴⁶ There are 60-70 contracts during any annual period (e.g., Susan B. Anthony Rehabilitation Center in Broward County, Science

⁴¹ Email, Florida Department of Education (Feb. 2, 2017).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

Center in Pinellas County, Vincent Academy in Sarasota, Ark Nassau in Nassau County, and Key Clubhouse in Miami-Dade).⁴⁷ No state funds are used in these strategic grant initiatives.⁴⁸

James Patrick Memorial Program

The Able Trust serves as administrator and fiduciary for the James Patrick Memorial Program, authorized in s. 413.402, F.S., which helps fund the services of personal care attendants for eligible workers with disabilities.⁴⁹ Seven contracts to obtain funding for the program exist with state attorney offices in different parts of the state.⁵⁰

Specialty License Plates for Motorcycles

The Able Trust serves as fiduciary for funds for the sale of specialty license plates for motorcycles pursuant to s. 320.08069(4)(d), F.S.⁵¹ It collects, distributes, and manages the funds, which benefits five disabilities organizations – Florida Association of Centers for Independent Living, the James Patrick Memorial Program, Preserve Vision Florida, the Brain and Spinal Cord Injury Program – Florida Department of Health, and the Blind Services Foundation of Florida, Inc.⁵² The Foundation receives a 10 percent management fee.⁵³

Independent Research

The Foundation conducts research on the perceptions of the business community on the inclusion of people with disabilities in its workforce to learn ways to address barriers, and to inform the public on the employment rate of such workers.⁵⁴

Effective Date

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Email, Florida Department of Education (Feb. 2, 2017).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By extending the repeal date of the direct-support organization, this bill will sustain a source of financial and other direct assistance for individuals who are disabled.

C. Government Sector Impact:

The bill has no fiscal impact. As background, the Legislature appropriated \$549,823 to the Florida Endowment Foundation for Vocational Rehabilitation in the 2016-2017 General Appropriations Act.⁵⁵

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 413.615 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.)

Recommended CS/CS by Appropriations Subcommittee on Pre-K – 12 Education on April 13, 2017:

The committee substitute increases transparency and oversight of the DSO by requiring the DSO to separately account for state and private funds and requiring private funds be spent on administrative expenses that are limited to fifteen percent of the estimated expenditures. It requires the DSO to post additional information on its website, including the annual audit and annual report. It changes the repeal date from October 1, 2027 to October 1, 2022.

⁵⁵ Specific appropriation 34, ch. 2016-66, L.O.F.

CS by Education on March 21, 2017:

The Committee Substitute extends the repeal date from October 1, 2017 to October 1, 2027 for the Florida Endowment Foundation for Vocational Rehabilitation.

B. Amendments:

None.

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



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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Pre-K - 12 Education)

A bill to be entitled

An act relating to the Florida Endowment for Vocational Rehabilitation; amending s. 413.615, F.S.; requiring the Florida Endowment Foundation for Vocational Rehabilitation to maintain separate accounts for certain funds received from state sources and public or private sources; establishing restrictions regarding administrative costs of the foundation; requiring the foundation to publish specified information on its website; requiring that funds allocated for research, advertising, or consulting be subject to a competitive solicitation process; prohibiting use of state funds to fund certain events; extending the date for future review and repeal of provisions governing the Florida Endowment for Vocational Rehabilitation; providing an effective date.

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

Section 1. Section 1. Section 413.615, Florida Statutes, is amended to read:

413.615 Florida Endowment for Vocational Rehabilitation.-

(1) SHORT TITLE.-This section may be cited as the "Florida Endowment for Vocational Rehabilitation Act."

(2) DEFINITIONS.-For the purposes of this section:

(a) "Board" means the board of directors of the Florida



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Endowment Foundation for Vocational Rehabilitation.

(b) "Endowment fund" means an account established within the Florida Endowment Foundation for Vocational Rehabilitation to provide a continuing and growing source of revenue for vocational rehabilitation efforts.

(c) "Foundation" means the Florida Endowment Foundation for Vocational Rehabilitation.

(d) "Operating account" means an account established under paragraph (4)(d) to carry out the purposes provided in subsection (10).

(3) LEGISLATIVE INTENT.-The Legislature recognizes that it is in the best interest of the citizens of this state that citizens with disabilities be afforded a fair opportunity to become self-supporting, productive members of society. However, there is a critical need for significant additional funding to achieve this goal. Accordingly, the Legislature further finds and declares that:

(a) With skilled evaluation procedures and proper rehabilitative treatment, plus employment, training, and supportive services consistent with the needs of the individual, persons who are disabled can assume the activities of daily living and join their communities with dignity and independence.

(b) The purpose of this section is to broaden the participation and funding potential for further significant support for the rehabilitation of Florida citizens who are disabled.

(c) It is appropriate to encourage individual and corporate support and involvement, as well as state support and involvement, to promote employment opportunities for disabled



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57 citizens.

58 (4) REVENUE FOR THE ENDOWMENT FUND.—

59 (a) The endowment fund of the Florida Endowment for
60 Vocational Rehabilitation is created as a long-term, stable, and
61 growing source of revenue to be administered, in accordance with
62 rules promulgated by the division, by the foundation as a
63 direct-support organization of the division.

64 (b) The principal of the endowment fund shall derive from
65 the deposits made pursuant to s. 318.21(2)(e), together with any
66 legislative appropriations which may be made to the endowment,
67 and such bequests, gifts, grants, and donations as may be
68 solicited for such purpose by the foundation from public or
69 private sources.

70 (c) All funds remitted to the Department of Revenue
71 pursuant to s. 318.21(2)(e) and (5) shall be transmitted monthly
72 to the foundation for use as provided in subsection (10). All
73 remaining liquid balances of funds held for investment and
74 reinvestment by the State Board of Administration for the
75 endowment fund on the effective date of this act shall be
76 transmitted to the foundation within 60 days for use as provided
77 in subsection (10).

78 (d) The board of directors of the foundation shall
79 establish the operating account and shall deposit therein the
80 moneys transmitted pursuant to paragraph (c). Moneys in the
81 operating account shall be available to carry out the purposes
82 of subsection (10).

83 (e) Funds received from state sources shall be accounted
84 for separately from bequests, gifts, grants, and donations that
85 may be solicited for such purposes by the foundation from public



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86 or private sources. Earnings on funds received from state
87 sources and funds received from public or private sources shall
88 be accounted for separately.

89 (5) THE FLORIDA ENDOWMENT FOUNDATION FOR VOCATIONAL
90 REHABILITATION.—The Florida Endowment Foundation for Vocational
91 Rehabilitation is hereby created as a direct-support
92 organization of the Division of Vocational Rehabilitation, to
93 encourage public and private support to enhance vocational
94 rehabilitation and employment of citizens who are disabled. As a
95 direct-support organization, the foundation shall operate under
96 contract with the division and shall:

97 (a) Be a Florida corporation not for profit incorporated
98 under the provisions of chapter 617 and approved by the
99 Department of State.

100 (b) Be organized and operated exclusively to raise funds;
101 to submit requests and receive grants from the Federal
102 Government, the state, private foundations, and individuals; to
103 receive, hold, and administer property; and to make expenditures
104 to or for the benefit of the rehabilitation programs approved by
105 the board of directors of the foundation.

106 (c) Be approved by the division to be operating for the
107 benefit and best interest of the state.

108 (6) DIRECT-SUPPORT ORGANIZATION CONTRACT.—The contract
109 between the foundation and the division shall provide for:

110 (a) Approval of the articles of incorporation of the
111 foundation by the division.

112 (b) Governance of the foundation by a board of directors
113 appointed by the Governor.

114 (c) Submission of an annual budget of the foundation for



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115 approval by the division.

116 (d) Certification by the division, after an annual
117 financial and performance review, that the foundation is
118 operating in compliance with the terms of the contract and the
119 rules of the division, and in a manner consistent with the goals
120 of the Legislature in providing assistance to disabled citizens.

121 (e) The release and conditions of the expenditure of any
122 state revenues.

123 (f) The reversion to the state of moneys in the foundation
124 and in any other funds and accounts held in trust by the
125 foundation if the contract is terminated.

126 (g) The fiscal year of the foundation, to begin on July 1
127 and end on June 30 of each year.

128 (7) CONFIDENTIALITY.-

129 (a) The identity of a donor or prospective donor to the
130 Florida Endowment Foundation for Vocational Rehabilitation who
131 desires to remain anonymous and all information identifying such
132 donor or prospective donor are confidential and exempt from the
133 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
134 Constitution. Portions of meetings of the Florida Endowment
135 Foundation for Vocational Rehabilitation during which the
136 identity of donors or prospective donors is discussed are exempt
137 from the provisions of s. 286.011 and s. 24(b), Art. I of the
138 State Constitution.

139 (b) Records relating to clients of or applicants to the
140 Division of Vocational Rehabilitation that come into the
141 possession of the foundation and that are confidential by other
142 provisions of law are confidential and exempt from the
143 provisions of s. 119.07(1) and s. 24(a), Art. I of the State



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144 Constitution, and may not be released by the foundation.

145 Portions of meetings of the Florida Endowment Foundation for
146 Vocational Rehabilitation during which the identities of such
147 clients of or applicants to the Division of Vocational
148 Rehabilitation are discussed are exempt from the provisions of
149 s. 286.011 and s. 24(b), Art. I of the State Constitution.

150 (8) BOARD OF DIRECTORS.-The foundation shall be
151 administered by a board of directors, as follows:

152 (a) *Membership.*-The board of directors shall consist of
153 nine members who have an interest in service to persons with
154 disabilities and who:

155 1. Have skills in foundation work or other fundraising
156 activities, financial consulting, or investment banking or other
157 related experience; or

158 2. Have experience in policymaking or management-level
159 positions or have otherwise distinguished themselves in the
160 field of business, industry, or rehabilitation.

161 Disabled individuals who meet the above criteria shall be given
162 special consideration for appointment.

163 (b) *Appointment.*-The board members shall be appointed by
164 the Governor.

165 (c) *Terms.*-Board members shall serve for 3-year terms or
166 until resignation or removal for cause.

167 (d) *Filling of vacancies.*-In the event of a vacancy on the
168 board caused by other than the expiration of a term, a new
169 member shall be appointed.

170 (e) *Removal for cause.*-Each member is accountable to the
171 Governor for the proper performance of the duties of office. The
172



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173 Governor may remove any member from office for malfeasance,
174 misfeasance, neglect of duty, incompetence, or permanent
175 inability to perform official duties or for pleading nolo
176 contendere to, or being found guilty of, a crime.

177 (9) ORGANIZATION, POWERS, AND DUTIES.—Within the limits
178 prescribed in this section or by rule of the division:

179 (a) Upon appointment, the board shall meet and organize.
180 Thereafter, the board shall hold such meetings as are necessary
181 to implement the provisions of this section and shall conduct
182 its business in accordance with rules promulgated by the
183 division.

184 (b) The board may solicit and receive bequests, gifts,
185 grants, donations, goods, and services. Where gifts are
186 restricted as to purpose, they may be used only for the purpose
187 or purposes stated by the donor. The board may transmit monetary
188 gifts to the State Board of Administration for deposit in the
189 endowment fund principal.

190 (c) The board may enter into contracts with the Federal
191 Government, state or local agencies, private entities, or
192 individuals to carry out the purposes of this section.

193 (d) The board may identify, initiate, and fund new and
194 creative programs to carry out the purposes of this section,
195 utilizing existing organizations, associations, and agencies to
196 carry out such rehabilitation programs and purposes wherever
197 possible.

198 (e) The board may make gifts or grants:

- 199 1. To the State of Florida or any political subdivision
200 thereof, or any public agency of state or local government.
201 2. To a corporation, trust, association, or foundation



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202 organized and operated exclusively for charitable, educational,
203 or scientific purposes.

204 3. To any citizen who has a documented disability.

205 4. To the division for purposes of program recognition and
206 marketing, public relations and education, professional
207 development, and technical assistance and workshops for grant
208 applicants and recipients, the business community, and
209 individuals with disabilities or recognized groups organized on
210 their behalf.

211 (f) The board may advertise and solicit applications for
212 funding and shall evaluate applications and program proposals
213 submitted thereto. Funding shall be awarded only where the
214 evaluation is positive and the proposal meets both the
215 guidelines for use established in subsection (10) and such
216 evaluation criteria as the division may prescribe by rule.

217 (g) The board shall monitor, review, and annually evaluate
218 funded programs to determine whether funding should be
219 continued, terminated, reduced, or increased.

220 (h) The board shall establish an operating account as
221 provided in paragraph (4)(d).

222 (i) The board may take such additional actions, including
223 the hiring of necessary staff, as are deemed necessary and
224 appropriate to administer this section, subject to rules of the
225 division.

226 (j) Administrative costs shall be kept to the minimum
227 necessary for the efficient and effective administration of the
228 foundation and are limited to 15 percent of total estimated
229 expenditures in any calendar year. Administrative costs include
230 nonprogram costs, officer salaries, audits, salaries or other



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231 costs for nonofficers or constructors providing services that
232 are not considered program costs, and costs for promoting the
233 purposes of the foundation, and other allowable administrative
234 costs. Administrative costs may not be paid from funds received
235 directly from the state.

236 (k) The foundation shall publish on its website:

237 1. The annual audit required by subsection (11) and the
238 annual report required by subsection (12).

239 2. For each position filled by an officer or employee, the
240 position's compensation level.

241 3. A copy of each contract into which the foundation
242 enters.

243 4. Information on each program, gift, or grant funded by
244 the foundation, including:

245 a. Projected economic benefits at the time of the initial
246 award date.

247 b. Information describing the program, gift, or grant
248 funded.

249 c. The geographic area impacted.

250 d. Any matching, in-kind support or other support.

251 e. The expected duration.

252 f. Evaluation criteria.

253 5. The foundation's contract with the division required by
254 subsection (6).

255 (10) DISTRIBUTION OF MONEYS.—The board shall use the moneys
256 in the operating account, by whatever means, to provide for:

257 (a) Planning, research, and policy development for issues
258 related to the employment and training of disabled citizens, and
259 publication and dissemination of such information as may serve



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260 the objectives of this section.

261 (b) Promotion of initiatives for disabled citizens.

262 (c) Funding of programs which engage in, contract for,
263 foster, finance, or aid in job training and counseling for
264 disabled citizens or research, education, demonstration, or
265 other activities related thereto.

266 (d) Funding of programs which engage in, contract for,
267 foster, finance, or aid in activities designed to advance better
268 public understanding and appreciation of the field of vocational
269 rehabilitation.

270 (e) Funding of programs, property, or facilities which aid,
271 strengthen, and extend in any proper and useful manner the
272 objectives, work, services, and physical facilities of the
273 division, in accordance with the purposes of this section.

274
275 Any allocation of funds for research, advertising, or consulting
276 shall be subject to a competitive solicitation process. State
277 funds may not be used to fund events for private sector donors
278 or potential donors or to honor supporters.

279 (11) ANNUAL AUDIT.—The board shall provide for an annual
280 financial audit of the foundation in accordance with s. 215.981.
281 The identities of donors and prospective donors who desire to
282 remain anonymous shall be protected, and that anonymity shall be
283 maintained in the auditor's report.

284 (12) ANNUAL REPORT.—The board shall issue a report to the
285 Governor, the President of the Senate, the Speaker of the House
286 of Representatives, and the Commissioner of Education by
287 February 1 each year, summarizing the performance of the
288 endowment fund for the previous fiscal year, summarizing the



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289 foundation's fundraising activities and performance, and
290 detailing those activities and programs supported by the
291 endowment principal or earnings on the endowment principal or by
292 bequests, gifts, grants, donations, and other valued goods and
293 services received.

294 (13) RULES.—The division shall promulgate rules for the
295 implementation of this section.

296 (14) REPEAL.—This section is repealed October 1, 2022 ~~2017~~,
297 unless reviewed and saved from repeal by the Legislature.

298 Section 2. This act shall take effect July 1, 2017.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 890

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Pre-K - 12 Education); Education Committee; and Senators Bean and Montford

SUBJECT: Florida Endowment for Vocational Rehabilitation

DATE: April 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 890 extends the repeal date for the Florida Endowment Foundation for Vocational Rehabilitation (Foundation), which serves as the direct-support organization of the Division of Vocational Rehabilitation within the Florida Department of Education from October 1, 2017 to October 1, 2022.

The bill increases transparency and oversight of the DSO by requiring the DSO to:

- Account for state and private funds separately.
- Use private funds for administrative expenses, which are limited to fifteen percent of the estimated expenditures.
- Publish additional information on its website.
- Hold a competitive solicitation process for any allocation of funds for research, advertising or consulting. The bill has no fiscal impact.

The bill takes effect July 1, 2017.

II. Present Situation:

Citizen-Support Organizations and Direct-Support Organizations

Citizen-support organizations (CSOs) and direct-support organization (DSOs) are statutorily created non-profit organizations¹ authorized to carry out specific tasks in support of public entities or public causes.² The function and purpose of a CSO or DSO are prescribed by an enacting statute and a written contract with the agency the CSO or DSO supports.³

CSO and DSO Transparency and Reporting Requirements

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs.⁴ Specifically, the law requires each CSO and DSO to annually submit the following information to the appropriate agency by August 1:⁵

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's ethics code; and
- A copy of the organization's most recent Internal Revenue Service (IRS) Form 990.⁶

Each agency receiving information from a CSO or DSO pursuant to law must make such information available to the public through the agency's website.⁷ If the organization maintains a website, the agency's website must provide a link to the organization's website.⁸ Any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting the required information to the agency as specified in law.⁹ If a CSO or DSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate any contract between the agency and the CSO or DSO.¹⁰

By August 15 of each year, the agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) the information submitted by each CSO or DSO along with the agency's recommendation and supporting rationale to continue, terminate, or modify the agency's association with the CSO or DSO.¹¹

¹ Chapter 617, F.S.

² *E.g.*, ss. 1009.983 and 413.0111, F.S.

³ *See* ss. 14.29(9)(a), 16.616(1), and 258.015(1), F.S. *See also* Rules of the Florida Auditor General, *Audits of Certain Nonprofit Organizations* (effective June 30, 2016), Rule 10.720(1)(b) and (d), *available at* http://www.myflorida.com/audgen/pages/pdf_files/10_700.pdf.

⁴ Section 3, ch. 2014-96, L.O.F

⁵ Section 20.058(1), F.S.

⁶ The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501. 26 C.F.R. 1.6033-2.

⁷ Section 20.058(2), F.S.

⁸ *Id.*

⁹ Section 20.058(4), F.S.

¹⁰ *Id.*

¹¹ *Id.* at (3).

Any law creating, or authorizing the creation of a CSO or DSO must state that the authorization for the organization repeals on October 1 of the 5th year after enactment unless reviewed and reenacted by the Legislature. CSOs and DSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019.¹²

CSO and DSO Audit Requirements

Section 215.981, F.S., requires each CSO and DSO with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.¹³ An independent certified public accountant in accordance with rules adopted by the Auditor General must conduct the audit. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports.¹⁴ Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of a CSO's or DSO's accounts and records.¹⁵

CSO and DSO Ethics Code Requirement

Section 112.3251, F.S., requires a CSO or DSO to adopt a code of ethics. The code of ethics must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S.¹⁶ A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must post its code of ethics on its website.¹⁷

Division of Vocational Rehabilitation

The Division of Vocational Rehabilitation (Division) is one of several divisions within the Department of Education (DOE).¹⁸ The Division is the administrative unit designated at the state level to ensure compliance with the Vocational Rehabilitation Act of 1973, as amended.¹⁹ The Division's mission is "to help people with disabilities find and maintain employment and enhance their independence."²⁰ Vocational Rehabilitation (VR) is a federal-state program that helps people who have physical or mental disabilities find and maintain meaningful careers.²¹

Florida Endowment Foundation for Vocational Rehabilitation

In 1990, the Legislature created the Florida Endowment Foundation for Vocational Rehabilitation (Foundation or The Able Trust) as a direct-support organization of the Division

¹² *Id.* at (5).

¹³ The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

¹⁴ Section 215.981(1), F.S.

¹⁵ Section 11.45(3), F.S.

¹⁶ Some of the standards of conduct and disclosures in ss. 112.313 and 112.3143(2), F.S., include misuse of public position, solicitation or acceptance of gifts, unauthorized compensation, and voting conflicts.

¹⁷ Section 112.3251, F.S.

¹⁸ Section 20.15(3)(d), F.S.

¹⁹ Section 413.202, F.S.

²⁰ Florida Division of Vocational Rehabilitation, <http://www.rehabworks.org/> (last visited March 20, 2017).

²¹ Florida Division of Vocational Rehabilitation, *Frequently Asked Questions*, <http://www.rehabworks.org/faq.shtml> (last visited March 20, 2017).

within the DOE for the purpose of encouraging public and private support to enhance vocational rehabilitation and employment of citizens who are disabled.²²

The Foundation conducts business as The Able Trust,²³ which operates under contract with the Division to exclusively raise funds; submit requests and receive grants from the Federal Government, the state, private foundations, and individuals; to receive, hold, and administer property. Additionally, The Able Trust provides funds for the benefit of the rehabilitation programs approved by the Foundation's board of directors.²⁴

For 26 years, the Foundation has gone beyond the traditional direct-support organization role of supporting activities of the Division by developing and expanding statewide programs to move people with disabilities into the workforce.²⁵

Currently, the authorizing statute for the Foundation is scheduled for repeal October 1, 2017, unless reviewed and reenacted by the Legislature.²⁶

Legislative Review: Findings and Recommendations

Senate professional staff reviewed documents related to the Foundation for compliance with the authorizing and accountability statutes. Findings and recommendations are summarized below.

Foundation's Compliance under Authorizing Statute

The Foundation:²⁷

- Must be incorporated as a not-for-profit corporation under law, which requires initial filing of articles of incorporation and subsequent filing of sworn annual reports with the Department of State.²⁸
- Must be organized and operate exclusively for the benefit of the rehabilitation programs approved by the Board of Directors of the Foundation.
- Must be approved by the Division to operate for the benefit and best interest of the state.
- Is subject to the public meetings and public records requirements in statute.²⁹
- Must comply with law which requires each DSO and CSO with annual expenditures in excess of \$100,000 to annually provide independent financial audit.³⁰

The Foundation appears to comply with the authorizing statutory requirements.

²² Section 9, ch. 90-330, L.O.F., codified as s. 413.615(5), F.S.

²³ The Able Trust is another name for the Foundation, essentially the trade name of the Foundation.²³ Email, Florida Department of Education (Feb. 2, 2017).

²⁴ Section 413.615(5)(b), F.S.

²⁵ Email, Florida Department of Education (Feb. 2, 2017).

²⁶ Section 413.615(14), F.S.

²⁷ Section 413.615(5), F.S.

²⁸ Section 413.615(5)(a), F.S. Not-for-profit corporations are incorporated under Chapter 617, F.S.; Articles of Incorporation are required by s. 617.0202, F.S., and annual reports are required by s. 617.1622, F.S.

²⁹ Section 413.615(7), F.S. See also s. 24, Art. I of the State Constitution, ch. 119, F.S., and s. 286.011, F.S. Section 413.615(7), F.S. exempts certain information from public record and meetings laws.

³⁰ Section 215.981, F.S.

Foundation's Compliance under Accountability Statute

- Each DSO is required to annually provide to the appropriate agency specified information by August 1.³¹
 - Finding: The Foundation appears to have provided the required information to the DOE by the statutory deadline.³²
- Each agency must submit an annual report by August 15 of each year with the information received from the DSO or CSO which contains a recommendation for continuing, terminating, or modifying the agency's association with the DSO or CSO.³³
 - Finding: The DOE submitted its annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OPPAGA, along with the DOE's recommendation and rationale for continuing the Foundation by the statutory deadline.³⁴
- Each agency must make the information received from each DSO or CSO available to the public through the agency's website.³⁵ If the DSO or CSO maintains its own website, the agency must provide a link on its website to the DSO's or CSO's website.³⁶
 - Finding: The required annual report has been posted to Florida's Fiscal Portal.³⁷ A link to the Florida Fiscal Portal is available on the DOE's website.³⁸ However, a link to the Foundation's website is not found on either the DOE's or the Division's website.
 - Recommendation: The DOE or the Division should create a link on the DOE or the Division's website to the Foundation's website.
- Any contract between an agency and a DSO or CSO must be contingent upon the DSO or CSO's submission and posting of the required information.³⁹ If the DSO or CSO fails to submit the required information for two consecutive years, the agency head must terminate the contract.⁴⁰
 - Finding: The Foundation appears to have submitted the required information for the last two consecutive years. However, neither the Foundation, nor the DOE or the Division, appear to have posted the information to its respective website as required.
 - Recommendation: Either the DOE or the Division, or the Foundation should post the statutorily required information to its respective website.

³¹ Section 20.058(1), F.S. See pg. 2 of this analysis.

³² Email, Florida Department of Education (Nov. 15, 2016); Florida Fiscal Portal, Department of Education's 2016-2017 Annual Report on Citizen-Support and Direct-Support Organizations, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=14514&DocType=PDF>, at 3-4.

³³ Section 20.058(3), F.S.

³⁴ Email, Florida Department of Education (Jan. 11, 2017); Florida Fiscal Portal, Department of Education's 2016-2017 Annual Report on Citizen-Support and Direct-Support Organizations, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=14514&DocType=PDF>, at 3-4.

³⁵ Section 20.058(2), F.S.

³⁶ *Id.*

³⁷ Email, Florida Department of Education (Jan. 11, 2017). Florida Fiscal Portal, Department of Education's 2014-2015 Annual Report on Citizen-Support and Direct-Support Organizations (8/5/14), available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=10642&DocType=PDF>, at 4; Florida Fiscal Portal, Department of Education's 2015-2016 Annual Report on Citizen-Support and Direct-Support Organizations (8/1/15), available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=13513&DocType=PDF>, at 5; Florida Fiscal Portal, Department of Education's 2016-2017 Annual Report on Citizen-Support and Direct-Support Organizations (8/1/16), available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=14514&DocType=PDF>, at 5.

³⁸ Email, Florida Department of Education (Jan. 13, 2017).

³⁹ Section 20.058(4), F.S.

⁴⁰ *Id.*

III. Effect of Proposed Changes:

This bill extends the repeal date for the Florida Endowment Foundation for Vocational Rehabilitation (Foundation or The Able Trust), which serves as the direct-support organization of the Division of Vocational Rehabilitation within the Florida Department of Education from October 1, 2017 to October 1, 2022.

The bill increases transparency and oversight of the DSO by requiring the DSO to:

- Account for state and private funds separately.
- Use private funds for administrative expenses, which are limited to fifteen percent of the estimated expenditures.
- Publish additional information on its website including the annual audit, annual report, contracting information and information on each program, gift, or grant funded by the Foundation.
- Hold a competitive solicitation process for any allocation of funds for research, advertising or consulting.
- Prohibit the use of state funds to fund events for private donors, potential donors or to honor supports.

The extension of the repeal date will provide for the continuation of programs administered by The Able Trust which include, but are not limited to:⁴¹

Youth Programs

The Able Trust's High School High Tech program has 43 program sites in 40 Florida counties.⁴² The program provides leadership training, career direction, community involvement, and education to 1,500-2,000 students per year.⁴³ The current cost to the state's budget for this program is \$275 per student, which covers slightly more than one-fourth of the total program costs.⁴⁴

The Able Trust's Florida Youth Leadership Program is a week-long leadership training program that takes place every summer at Florida State University, and advances high school juniors and seniors with disabilities and young adult job seekers toward a career path. There is also a related alumni association, established a year ago.⁴⁵

Grant Programs

The Able Trust works with community organizations throughout the state to help them assist Floridians with disabilities in their area to gain employment.⁴⁶ There are 60-70 contracts during any annual period (e.g., Susan B. Anthony Rehabilitation Center in Broward County, Science

⁴¹ Email, Florida Department of Education (Feb. 2, 2017).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

Center in Pinellas County, Vincent Academy in Sarasota, Ark Nassau in Nassau County, and Key Clubhouse in Miami-Dade).⁴⁷ No state funds are used in these strategic grant initiatives.⁴⁸

James Patrick Memorial Program

The Able Trust serves as administrator and fiduciary for the James Patrick Memorial Program, authorized in s. 413.402, F.S., which helps fund the services of personal care attendants for eligible workers with disabilities.⁴⁹ Seven contracts to obtain funding for the program exist with state attorney offices in different parts of the state.⁵⁰

Specialty License Plates for Motorcycles

The Able Trust serves as fiduciary for funds for the sale of specialty license plates for motorcycles pursuant to s. 320.08069(4)(d), F.S.⁵¹ It collects, distributes, and manages the funds, which benefits five disabilities organizations – Florida Association of Centers for Independent Living, the James Patrick Memorial Program, Preserve Vision Florida, the Brain and Spinal Cord Injury Program – Florida Department of Health, and the Blind Services Foundation of Florida, Inc.⁵² The Foundation receives a 10 percent management fee.⁵³

Independent Research

The Foundation conducts research on the perceptions of the business community on the inclusion of people with disabilities in its workforce to learn ways to address barriers, and to inform the public on the employment rate of such workers.⁵⁴

Effective Date

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Email, Florida Department of Education (Feb. 2, 2017).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By extending the repeal date of the direct-support organization, this bill will sustain a source of financial and other direct assistance for individuals who are disabled.

C. Government Sector Impact:

The bill has no fiscal impact. As background, the Legislature appropriated \$549,823 to the Florida Endowment Foundation for Vocational Rehabilitation in the 2016-2017 General Appropriations Act.⁵⁵

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 413.615 of the Florida Statutes.

IX. **Additional Information:**

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

CS/CS by Appropriations on April 20, 2017:

The committee substitute increases transparency and oversight of the DSO by requiring the DSO to separately account for state and private funds and requiring private funds be spent on administrative expenses that are limited to fifteen percent of the estimated expenditures. It requires the DSO to post additional information on its website, including the annual audit and annual report. It changes the repeal date from October 1, 2027 to October 1, 2022.

CS by Education on March 21, 2017:

The Committee Substitute extends the repeal date from October 1, 2017 to

⁵⁵ Specific appropriation 34, ch. 2016-66, L.O.F.

October 1, 2027 for the Florida Endowment Foundation for Vocational Rehabilitation.

B. Amendments:

None.

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

By the Committee on Education; and Senator Bean

581-02687-17

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1 A bill to be entitled
 2 An act relating to the Florida Endowment for
 3 Vocational Rehabilitation; amending s. 413.615, F.S.;
 4 extending the date for future review and repeal of
 5 provisions governing the Florida Endowment for
 6 Vocational Rehabilitation; providing an effective
 7 date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Section 413.615, Florida Statutes, is amended to
 12 read:
 13 413.615 Florida Endowment for Vocational Rehabilitation.—
 14 (1) SHORT TITLE.—This section may be cited as the “Florida
 15 Endowment for Vocational Rehabilitation Act.”
 16 (2) DEFINITIONS.—For the purposes of this section:
 17 (a) “Board” means the board of directors of the Florida
 18 Endowment Foundation for Vocational Rehabilitation.
 19 (b) “Endowment fund” means an account established within
 20 the Florida Endowment Foundation for Vocational Rehabilitation
 21 to provide a continuing and growing source of revenue for
 22 vocational rehabilitation efforts.
 23 (c) “Foundation” means the Florida Endowment Foundation for
 24 Vocational Rehabilitation.
 25 (d) “Operating account” means an account established under
 26 paragraph (4) (d) to carry out the purposes provided in
 27 subsection (10).
 28 (3) LEGISLATIVE INTENT.—The Legislature recognizes that it
 29 is in the best interest of the citizens of this state that

Page 1 of 9

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

581-02687-17

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30 citizens with disabilities be afforded a fair opportunity to
 31 become self-supporting, productive members of society. However,
 32 there is a critical need for significant additional funding to
 33 achieve this goal. Accordingly, the Legislature further finds
 34 and declares that:
 35 (a) With skilled evaluation procedures and proper
 36 rehabilitative treatment, plus employment, training, and
 37 supportive services consistent with the needs of the individual,
 38 persons who are disabled can assume the activities of daily
 39 living and join their communities with dignity and independence.
 40 (b) The purpose of this section is to broaden the
 41 participation and funding potential for further significant
 42 support for the rehabilitation of Florida citizens who are
 43 disabled.
 44 (c) It is appropriate to encourage individual and corporate
 45 support and involvement, as well as state support and
 46 involvement, to promote employment opportunities for disabled
 47 citizens.
 48 (4) REVENUE FOR THE ENDOWMENT FUND.—
 49 (a) The endowment fund of the Florida Endowment for
 50 Vocational Rehabilitation is created as a long-term, stable, and
 51 growing source of revenue to be administered, in accordance with
 52 rules promulgated by the division, by the foundation as a
 53 direct-support organization of the division.
 54 (b) The principal of the endowment fund shall derive from
 55 the deposits made pursuant to s. 318.21(2) (e), together with any
 56 legislative appropriations which may be made to the endowment,
 57 and such bequests, gifts, grants, and donations as may be
 58 solicited for such purpose by the foundation from public or

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

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59 private sources.

60 (c) All funds remitted to the Department of Revenue
61 pursuant to s. 318.21(2)(e) and (5) shall be transmitted monthly
62 to the foundation for use as provided in subsection (10). All
63 remaining liquid balances of funds held for investment and
64 reinvestment by the State Board of Administration for the
65 endowment fund on the effective date of this act shall be
66 transmitted to the foundation within 60 days for use as provided
67 in subsection (10).

68 (d) The board of directors of the foundation shall
69 establish the operating account and shall deposit therein the
70 moneys transmitted pursuant to paragraph (c). Moneys in the
71 operating account shall be available to carry out the purposes
72 of subsection (10).

73 (5) THE FLORIDA ENDOWMENT FOUNDATION FOR VOCATIONAL
74 REHABILITATION.—The Florida Endowment Foundation for Vocational
75 Rehabilitation is hereby created as a direct-support
76 organization of the Division of Vocational Rehabilitation, to
77 encourage public and private support to enhance vocational
78 rehabilitation and employment of citizens who are disabled. As a
79 direct-support organization, the foundation shall operate under
80 contract with the division and shall:

81 (a) Be a Florida corporation not for profit incorporated
82 under the provisions of chapter 617 and approved by the
83 Department of State.

84 (b) Be organized and operated exclusively to raise funds;
85 to submit requests and receive grants from the Federal
86 Government, the state, private foundations, and individuals; to
87 receive, hold, and administer property; and to make expenditures

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88 to or for the benefit of the rehabilitation programs approved by
89 the board of directors of the foundation.

90 (c) Be approved by the division to be operating for the
91 benefit and best interest of the state.

92 (6) DIRECT-SUPPORT ORGANIZATION CONTRACT.—The contract
93 between the foundation and the division shall provide for:

94 (a) Approval of the articles of incorporation of the
95 foundation by the division.

96 (b) Governance of the foundation by a board of directors
97 appointed by the Governor.

98 (c) Submission of an annual budget of the foundation for
99 approval by the division.

100 (d) Certification by the division, after an annual
101 financial and performance review, that the foundation is
102 operating in compliance with the terms of the contract and the
103 rules of the division, and in a manner consistent with the goals
104 of the Legislature in providing assistance to disabled citizens.

105 (e) The release and conditions of the expenditure of any
106 state revenues.

107 (f) The reversion to the state of moneys in the foundation
108 and in any other funds and accounts held in trust by the
109 foundation if the contract is terminated.

110 (g) The fiscal year of the foundation, to begin on July 1
111 and end on June 30 of each year.

112 (7) CONFIDENTIALITY.—

113 (a) The identity of a donor or prospective donor to the
114 Florida Endowment Foundation for Vocational Rehabilitation who
115 desires to remain anonymous and all information identifying such
116 donor or prospective donor are confidential and exempt from the

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117 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
 118 Constitution. Portions of meetings of the Florida Endowment
 119 Foundation for Vocational Rehabilitation during which the
 120 identity of donors or prospective donors is discussed are exempt
 121 from the provisions of s. 286.011 and s. 24(b), Art. I of the
 122 State Constitution.

123 (b) Records relating to clients of or applicants to the
 124 Division of Vocational Rehabilitation that come into the
 125 possession of the foundation and that are confidential by other
 126 provisions of law are confidential and exempt from the
 127 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
 128 Constitution, and may not be released by the foundation.
 129 Portions of meetings of the Florida Endowment Foundation for
 130 Vocational Rehabilitation during which the identities of such
 131 clients of or applicants to the Division of Vocational
 132 Rehabilitation are discussed are exempt from the provisions of
 133 s. 286.011 and s. 24(b), Art. I of the State Constitution.

134 (8) BOARD OF DIRECTORS.—The foundation shall be
 135 administered by a board of directors, as follows:

136 (a) *Membership*.—The board of directors shall consist of
 137 nine members who have an interest in service to persons with
 138 disabilities and who:

139 1. Have skills in foundation work or other fundraising
 140 activities, financial consulting, or investment banking or other
 141 related experience; or

142 2. Have experience in policymaking or management-level
 143 positions or have otherwise distinguished themselves in the
 144 field of business, industry, or rehabilitation.
 145

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146 Disabled individuals who meet the above criteria shall be given
 147 special consideration for appointment.

148 (b) *Appointment*.—The board members shall be appointed by
 149 the Governor.

150 (c) *Terms*.—Board members shall serve for 3-year terms or
 151 until resignation or removal for cause.

152 (d) *Filling of vacancies*.—In the event of a vacancy on the
 153 board caused by other than the expiration of a term, a new
 154 member shall be appointed.

155 (e) *Removal for cause*.—Each member is accountable to the
 156 Governor for the proper performance of the duties of office. The
 157 Governor may remove any member from office for malfeasance,
 158 misfeasance, neglect of duty, incompetence, or permanent
 159 inability to perform official duties or for pleading nolo
 160 contendere to, or being found guilty of, a crime.

161 (9) ORGANIZATION, POWERS, AND DUTIES.—Within the limits
 162 prescribed in this section or by rule of the division:

163 (a) Upon appointment, the board shall meet and organize.
 164 Thereafter, the board shall hold such meetings as are necessary
 165 to implement the provisions of this section and shall conduct
 166 its business in accordance with rules promulgated by the
 167 division.

168 (b) The board may solicit and receive bequests, gifts,
 169 grants, donations, goods, and services. Where gifts are
 170 restricted as to purpose, they may be used only for the purpose
 171 or purposes stated by the donor. The board may transmit monetary
 172 gifts to the State Board of Administration for deposit in the
 173 endowment fund principal.

174 (c) The board may enter into contracts with the Federal

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175 Government, state or local agencies, private entities, or
 176 individuals to carry out the purposes of this section.

177 (d) The board may identify, initiate, and fund new and
 178 creative programs to carry out the purposes of this section,
 179 utilizing existing organizations, associations, and agencies to
 180 carry out such rehabilitation programs and purposes wherever
 181 possible.

182 (e) The board may make gifts or grants:

183 1. To the State of Florida or any political subdivision
 184 thereof, or any public agency of state or local government.

185 2. To a corporation, trust, association, or foundation
 186 organized and operated exclusively for charitable, educational,
 187 or scientific purposes.

188 3. To any citizen who has a documented disability.

189 4. To the division for purposes of program recognition and
 190 marketing, public relations and education, professional
 191 development, and technical assistance and workshops for grant
 192 applicants and recipients, the business community, and
 193 individuals with disabilities or recognized groups organized on
 194 their behalf.

195 (f) The board may advertise and solicit applications for
 196 funding and shall evaluate applications and program proposals
 197 submitted thereto. Funding shall be awarded only where the
 198 evaluation is positive and the proposal meets both the
 199 guidelines for use established in subsection (10) and such
 200 evaluation criteria as the division may prescribe by rule.

201 (g) The board shall monitor, review, and annually evaluate
 202 funded programs to determine whether funding should be
 203 continued, terminated, reduced, or increased.

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204 (h) The board shall establish an operating account as
 205 provided in paragraph (4) (d).

206 (i) The board may take such additional actions, including
 207 the hiring of necessary staff, as are deemed necessary and
 208 appropriate to administer this section, subject to rules of the
 209 division.

210 (10) DISTRIBUTION OF MONEYS.—The board shall use the moneys
 211 in the operating account, by whatever means, to provide for:

212 (a) Planning, research, and policy development for issues
 213 related to the employment and training of disabled citizens, and
 214 publication and dissemination of such information as may serve
 215 the objectives of this section.

216 (b) Promotion of initiatives for disabled citizens.

217 (c) Funding of programs which engage in, contract for,
 218 foster, finance, or aid in job training and counseling for
 219 disabled citizens or research, education, demonstration, or
 220 other activities related thereto.

221 (d) Funding of programs which engage in, contract for,
 222 foster, finance, or aid in activities designed to advance better
 223 public understanding and appreciation of the field of vocational
 224 rehabilitation.

225 (e) Funding of programs, property, or facilities which aid,
 226 strengthen, and extend in any proper and useful manner the
 227 objectives, work, services, and physical facilities of the
 228 division, in accordance with the purposes of this section.

229 (11) ANNUAL AUDIT.—The board shall provide for an annual
 230 financial audit of the foundation in accordance with s. 215.981.
 231 The identities of donors and prospective donors who desire to
 232 remain anonymous shall be protected, and that anonymity shall be

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233 maintained in the auditor's report.

234 (12) ANNUAL REPORT.—The board shall issue a report to the
235 Governor, the President of the Senate, the Speaker of the House
236 of Representatives, and the Commissioner of Education by
237 February 1 each year, summarizing the performance of the
238 endowment fund for the previous fiscal year, summarizing the
239 foundation's fundraising activities and performance, and
240 detailing those activities and programs supported by the
241 endowment principal or earnings on the endowment principal or by
242 bequests, gifts, grants, donations, and other valued goods and
243 services received.

244 (13) RULES.—The division shall promulgate rules for the
245 implementation of this section.

246 (14) REPEAL.—This section is repealed October 1, 2027 ~~2017~~,
247 unless reviewed and saved from repeal by the Legislature.

248 Section 2. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 14, 2017

I respectfully request that **Senate Bill # 890**, relating to Florida Endowment for Vocational Rehabilitation, be placed on the:

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

A handwritten signature in blue ink 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)

4/20/17
Meeting Date

890
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name SUSANNE HOMANT

Job Title PRESIDENT/CEO

Address 3320 THOMASVILLE RD.

Phone 850-274-4493

Street
City THH State FL Zip 32308

Email SUSANNE@ABLETRUST.ORG

Speaking: For Against Information

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

Representing THE ABLE TRUST

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 Appropriations

BILL: PCS/CS/SB 896 (188282)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Higher Education); Education Committee; and Senator Simmons

SUBJECT: Direct-support Organization for the Florida Prepaid College Board

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AHE</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

PCS/CS/SB 896 modifies the financial interest disclosure requirement for certain members of the Florida Prepaid College Board and extends the repeal date for the Florida Prepaid College Board's direct-support organization from October 1, 2017, to October 1, 2022.

This bill has no impact on state funds.

The bill takes effect July 1, 2017.

II. Present Situation:

Citizen-Support Organizations and Direct-Support Organizations

Citizen-support organizations (CSOs) and direct-support organization (DSOs) are statutorily created entities that are generally required to be non-profit organizations¹ and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose

¹ Chapter 617, F.S.

of a CSO or DSO are prescribed by its enacting statute and for most part, by a written contract with the agency the CSO or DSO was created to support.²

CSO and DSO Transparency and Reporting Requirements

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs.³ Specifically, the law requires each CSO and DSO to annually submit by August 1, the following information to the appropriate agency:⁴

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's ethics code; and
- A copy of the organization's most recent Internal Revenue Service (IRS) Form 990.⁵

Each agency receiving CSO- or DSO-reported information must make that information available to the public through the agency's website.⁶ If the organization maintains a website, the agency's website must provide a link to the organization's website.⁷ Any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting the required information to the agency and posting such information as specified in law.⁸ If a CSO or DSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate any contract between the agency and the CSO or DSO.⁹

Annually, by August 15, the agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) the information submitted by each CSO or DSO along with the agency's recommendation and supporting rationale to continue, terminate, or modify the agency's association with the CSO or DSO.¹⁰

A law creating, or authorizing the creation of a CSO or DSO must state that the creation of or authorization for the organization repeals on October 1 of the 5th year after enactment unless reviewed and saved from repeal by the Legislature. CSOs and DSOs in existence on July 1, 2014, must be reviewed by the Legislature by July 1, 2019.¹¹

² See ss. 14.29(9)(a), 16.616(1), and 258.015(1), F.S. See also Rules of the Florida Auditor General, *Audits of Certain Nonprofit Organizations* (effective June 30, 2016), Rule 10.720(1)(b) and (1)(d) available at http://www.myflorida.com/audgen/pages/pdf_files/10_700.pdf.

³ Chapter 2014-96, L.O.F, effective upon becoming a law (e.g., June 13, 2014).

⁴ Section 20.058(1), F.S.

⁵ The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501. 26 C.F.R. 1.6033-2.

⁶ Section 20.058(2), F.S.

⁷ *Id.*

⁸ Section 20.058(4), F.S.

⁹ *Id.*

¹⁰ *Id.* at (3).

¹¹ *Id.* at (5).

CSO and DSO Audit Requirements

Section 215.981, F.S., requires each CSO and DSO, created or authorized pursuant to law, with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.¹² An independent certified public accountant in accordance with rules adopted by the Auditor General must conduct the audit. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports.¹³ Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of a CSO's or DSO's accounts and records.¹⁴

CSO and DSO Ethics Code Requirement

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S.¹⁵ A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its ethics code on its website.¹⁶

Florida Prepaid College Board

The Florida Prepaid College Board (Board) administers the Stanley G. Tate Florida Prepaid College Program (prepaid program) and the Florida College Savings Program (savings program), and performs specified essential governmental functions.¹⁷

Financial Disclosure

Each member of the Board is required to file a Full and Public Disclosure Financial Interests (Form 6), which is the same disclosure required of all elected constitutional officers and candidates for such office.¹⁸

¹² The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

¹³ Section 215.981(1), F.S.

¹⁴ Section 11.45(3), F.S.

¹⁵ Some of the standards of conduct and disclosures in ss. 112.313 and 112.3143(2), F.S., include misuse of public position, solicitation or acceptance of gifts, unauthorized compensation, and voting conflicts.

¹⁶ Section 112.3251, F.S.

¹⁷ Section 1009.971(1), F.S. See ss. 1009.97-1009.988, F.S. The Board is assigned to and administratively housed within the State Board of Administration, but it independently exercises specified powers and duties. *Id.* The Board consists of seven members, composed of the Attorney General, the Chief Financial Officer, the Chancellor of the State University System, the Chancellor of the Division of Florida Colleges, and three members appointed by the Governor and subject to confirmation by the Senate. *Id.* at 2.

¹⁸ Section 1009.971(2), F.S.

Stanley G. Tate Florida Prepaid College Foundation

In 1990, the Legislature authorized the Board to establish a DSO.¹⁹ The Board subsequently established the Stanley G. Tate Florida Prepaid College Foundation (Foundation) to provide scholarships to students who may not have otherwise had the opportunity to go to college.²⁰

The Foundation administers the Florida Prepaid Tuition Scholarship Program (Scholarship Tuition for At-Risk Students, or STARS Program).²¹ This program provides economically disadvantaged youth with prepaid postsecondary tuition scholarships.²²

The Foundation has established additional scholarship programs, with Board approval, which include the Black History Month Scholarship, Hispanic Heritage Month Scholarship, and National Mortgage Settlement Dormitory Project.²³

Legislative Review: Findings and Recommendations

Senate professional staff reviewed documents related to the Foundation for compliance with the authorizing and accountability statutes. Findings and recommendations are summarized below.

Foundation's Compliance under Authorizing Statute

The Foundation:²⁴

- Must be incorporated as a not-for-profit corporation under law, which requires initial filing of articles of incorporation and subsequent filing of sworn annual reports with the Department of State.²⁵
- Must be organized exclusively to receive, hold, invest, and administer property and to make expenditures on behalf of the board.
- Must be certified by the Board as operating in a manner consistent with the goals of the board and in the best interest of the state.
- Is subject to the public meetings and public records requirements in law.²⁶
- Must comply with state law, which requires each DSO and CSO with annual expenditures in excess of \$100,000 to provide annually for an independent financial audit.²⁷

The Foundation appears to comply with the authorizing statutory requirements.

¹⁹ Section 1009.983(1), F.S.; Stanley G. Tate Florida Prepaid College Foundation, *2015 Annual Report*, available at http://www.itppv.com/documents/pdf/foundation_2015_annual_report_web.pdf, at 1.

²⁰ Stanley G. Tate Florida Prepaid College Foundation, *2015 Annual Report*, available at http://www.itppv.com/documents/pdf/foundation_2015_annual_report_web.pdf, at 3.

²¹ Sections 1009.983(8), 1009.984, F.S.; Stanley G. Tate Florida Prepaid College Foundation, *2015 Annual Report*, available at http://www.itppv.com/documents/pdf/foundation_2015_annual_report_web.pdf, at 4.

²² Section 1009.984, F.S.

²³ Stanley G. Tate Florida Prepaid College Foundation, *2015 Annual Report*, available at http://www.itppv.com/documents/pdf/foundation_2015_annual_report_web.pdf, at 13-14.

²⁴ Section 1009.983, F.S.

²⁵ *Id.* at (1)(a). Not-for-profit corporations are incorporated under Chapter 617, F.S.; Articles of Incorporation are required by s. 617.0202, F.S., and annual reports are required by s. 617.1622, F.S.

²⁶ Section 1009.983(4), F.S. See also s. 24, Art. I of the State Constitution, ch. 119, F.S., and s. 286.011, F.S.

²⁷ Section 215.981, F.S.

Foundation's Compliance under Accountability Statute

- Each DSO is required to annually provide to the appropriate agency specified information by August 1.²⁸
 - Finding: The Foundation appears to have provided the required information to the Board by the statutory deadline.²⁹
- Each agency must submit an annual report by August 15 of each year with the information received from the DSO or CSO, which contains a recommendation for continuing, terminating, or modifying the agency's association with the DSO or CSO, and the rationale for doing so.³⁰
 - Finding: The Board appears to have submitted its annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OPPAGA, along with the Board's recommendation and rationale for continuing the Foundation as required by law by the statutory deadline.³¹
- Each agency must make the information received from each DSO or CSO available to the public through the agency's website.³² If the DSO or CSO maintains its own website, the agency must provide a link on its website to the DSO's or CSO's website.³³
 - Finding: The Board appears to have complied with the statutory requirements.³⁴
- Any contracts between an agency and a DSO or CSO must be contingent upon the DSO or CSO's submission and posting of the required information.³⁵ If the DSO or CSO fails to submit the required information for two consecutive years, the agency head must terminate the contract.³⁶
 - Finding: The contract between the Board and Foundation, effective December 9, 2016 through December 9, 2021, contains the language necessary for compliance with current law. However, the executed contract contains an error concerning the relevant statutory reference to the DSO accountability statute.³⁷
 - Recommendation: The Board should amend its contract with the Foundation to reflect the proper statutory reference.³⁸

III. Effect of Proposed Changes:

The bill modifies the financial interest disclosure requirement for certain members of the Florida Prepaid College Board and extends the repeal date for the Florida Prepaid College Board's direct-support organization (DSO) from October 1, 2017 to October 1, 2022.

²⁸ Section 20.058(1), F.S. See pg. 2 of this analysis.

²⁹ Email, The Stanley G. Tate Florida Prepaid Foundation (Oct. 6, 2016). Email, The Stanley G. Tate Florida Prepaid Foundation (Oct. 19, 2016).

³⁰ Section 20.058(3), F.S.

³¹ Email, The Stanley G. Tate Florida Prepaid Foundation (Oct. 6, 2016).

³² Section 20.058(2), F.S.

³³ *Id.*

³⁴ Florida Prepaid College Board, *Board Reports & Plans*, <http://www.myfloridaprepaid.com/who-we-are/about-the-board/board-reports-and-plans/> (last visited March 20, 2017).

³⁵ Section 20.058(4), F.S.

³⁶ *Id.*

³⁷ Email, The Stanley G. Tate Florida Prepaid Foundation (March 15, 2017). Foundation staff reported that they intend to amend the contract with the Florida College Prepaid Board to include the proper statutory reference. *Id.*

³⁸ Email, The Stanley G. Tate Florida Prepaid Foundation (Feb. 24, 2017).

Section 1 modifies the financial interest disclosure requirement to specify that certain members of the Florida Prepaid College Board (e.g., Chancellor of the State University System and Chancellor of the Florida College System or an individual appointed by the Governor who is not a constitutional officer) must file the Statement of Financial Interest (Form 1) rather than the currently required Full and Public Disclosure of Financial Interests (Form 6). This is consistent with the requirement for members of other similar boards.³⁹

Section 2 extends the repeal date of the DSO to October 1, 2022. This extension allows for the continuation of the Florida Prepaid Tuition Scholarship Program (Scholarship Tuition for At-Risk Students, or STARS Program) and other scholarship programs for Florida students, which include, but are not limited to, the Black History Month Scholarship, Hispanic Heritage Month Scholarship, and National Mortgage Settlement Dormitory Project Scholarship.⁴⁰

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Florida Prepaid College Foundation (Foundation) has awarded more than 42,000 college scholarships since its inception.⁴¹ More than 23,000 students have attended college using scholarship benefits awarded by the Foundation.⁴²

³⁹ Section 112.3145(1)(a), F.S.

⁴⁰ The Stanley G. Tate Florida Prepaid Foundation, *2017 Agency Legislative Bill Analysis for SB 896* (March 7, 2017), at 1.

⁴¹ The Stanley G. Tate Florida Prepaid Foundation, *2017 Agency Legislative Bill Analysis for SB 896* (March 7, 2017), at (1).

⁴² *Id.* at (2).

C. Government Sector Impact:

This bill has no direct impact on state revenues or expenditures. As background, the Legislature appropriated \$7 million to support the Florida Prepaid Tuition Scholarship Program, administered by the Foundation, in the 2016-2017 General Appropriation Act.⁴³ SB 2500, the Senate General Appropriations Act for the 2017-2018 Fiscal Year, also appropriates \$7 million for the Florida Prepaid Tuition Scholarship Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1009.971 and 1009.983.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

Recommended CS/CS by Appropriations Subcommittee on Higher Education on April 13, 2017:

The committee substitute modifies the financial interest disclosure requirement to specify that certain members of the Florida Prepaid College Board (e.g., Chancellor of the State University System and Chancellor of the Florida College System or an individual appointed by the Governor who is not a constitutional officer) must file the Statement of Financial Interest (Form 1) rather than the currently required Full and Public Disclosure of Financial Interests (Form 6).

CS by Education on March 21, 2017:

The committee substitute corrects the enacting clause to reflect the statutory name of the Florida Prepaid College Board.

B. Amendments:

None.

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

⁴³ Specific appropriation 71, s. 2, ch. 2016-66, L.O.F



576-03816-17

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

A bill to be entitled

An act relating to the Florida Prepaid College Board;
amending s. 1009.971, F.S.; revising the financial
disclosures required to be filed by certain Florida
Prepaid College Board members; amending s. 1009.983,
F.S.; extending the repeal date of the direct-support
organization for the Florida Prepaid College Board;
providing an effective date.

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

Section 1. Subsection (2) of section 1009.971, Florida
Statutes, is amended to read:

1009.971 Florida Prepaid College Board.—

(2) FLORIDA PREPAID COLLEGE BOARD; MEMBERSHIP.—The board
shall consist of seven members to be composed of the Attorney
General, the Chief Financial Officer, the Chancellor of the
State University System, the Chancellor of the Division of
Florida Colleges, and three members appointed by the Governor
and subject to confirmation by the Senate. Each member appointed
by the Governor shall possess knowledge, skill, and experience
in the areas of accounting, actuary, risk management, or
investment management. Each member of the board not appointed by
the Governor may name a designee to serve on the board on behalf
of the member; however, any designee so named shall meet the
qualifications required of gubernatorial appointees to the
board. Members appointed by the Governor shall serve terms of 3



576-03816-17

years. Any person appointed to fill a vacancy on the board shall
be appointed in a like manner and shall serve for only the
unexpired term. Any member shall be eligible for reappointment
and shall serve until a successor qualifies. Members of the
board shall serve without compensation but shall be reimbursed
for per diem and travel in accordance with s. 112.061. Each
member of the board who is not otherwise required to ~~shall~~ file
a full and public disclosure of ~~his or her~~ financial interests
pursuant to s. 8, Art. II of the State Constitution or s.
112.3144 shall file a statement of financial interests pursuant
to s. 112.3145 and corresponding statute.

Section 2. Subsection (9) of section 1009.983, Florida
Statutes, is amended to read:

1009.983 Direct-support organization; authority.—

(9) This section is repealed October 1, 2022 ~~2017~~, unless
reviewed and saved from repeal by the Legislature.

Section 3. This act shall take effect July 1, 2017.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 896

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Higher Education); Education Committee; and Senator Simmons

SUBJECT: Direct-support Organization for the Florida Prepaid College Board

DATE: April 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AHE</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 896 modifies the financial interest disclosure requirement for certain members of the Florida Prepaid College Board and extends the repeal date for the Florida Prepaid College Board's direct-support organization from October 1, 2017, to October 1, 2022.

This bill has no impact on state funds.

The bill takes effect July 1, 2017.

II. Present Situation:

Citizen-Support Organizations and Direct-Support Organizations

Citizen-support organizations (CSOs) and direct-support organization (DSOs) are statutorily created entities that are generally required to be non-profit organizations¹ and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose

¹ Chapter 617, F.S.

of a CSO or DSO are prescribed by its enacting statute and for most part, by a written contract with the agency the CSO or DSO was created to support.²

CSO and DSO Transparency and Reporting Requirements

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs.³ Specifically, the law requires each CSO and DSO to annually submit by August 1, the following information to the appropriate agency:⁴

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's ethics code; and
- A copy of the organization's most recent Internal Revenue Service (IRS) Form 990.⁵

Each agency receiving CSO- or DSO-reported information must make that information available to the public through the agency's website.⁶ If the organization maintains a website, the agency's website must provide a link to the organization's website.⁷ Any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting the required information to the agency and posting such information as specified in law.⁸ If a CSO or DSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate any contract between the agency and the CSO or DSO.⁹

Annually, by August 15, the agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) the information submitted by each CSO or DSO along with the agency's recommendation and supporting rationale to continue, terminate, or modify the agency's association with the CSO or DSO.¹⁰

A law creating, or authorizing the creation of a CSO or DSO must state that the creation of or authorization for the organization repeals on October 1 of the 5th year after enactment unless reviewed and saved from repeal by the Legislature. CSOs and DSOs in existence on July 1, 2014, must be reviewed by the Legislature by July 1, 2019.¹¹

² See ss. 14.29(9)(a), 16.616(1), and 258.015(1), F.S. See also Rules of the Florida Auditor General, *Audits of Certain Nonprofit Organizations* (effective June 30, 2016), Rule 10.720(1)(b) and (1)(d) available at http://www.myflorida.com/audgen/pages/pdf_files/10_700.pdf.

³ Chapter 2014-96, L.O.F, effective upon becoming a law (e.g., June 13, 2014).

⁴ Section 20.058(1), F.S.

⁵ The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501. 26 C.F.R. 1.6033-2.

⁶ Section 20.058(2), F.S.

⁷ *Id.*

⁸ Section 20.058(4), F.S.

⁹ *Id.*

¹⁰ *Id.* at (3).

¹¹ *Id.* at (5).

CSO and DSO Audit Requirements

Section 215.981, F.S., requires each CSO and DSO, created or authorized pursuant to law, with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.¹² An independent certified public accountant in accordance with rules adopted by the Auditor General must conduct the audit. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports.¹³ Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of a CSO's or DSO's accounts and records.¹⁴

CSO and DSO Ethics Code Requirement

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S.¹⁵ A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its ethics code on its website.¹⁶

Florida Prepaid College Board

The Florida Prepaid College Board (Board) administers the Stanley G. Tate Florida Prepaid College Program (prepaid program) and the Florida College Savings Program (savings program), and performs specified essential governmental functions.¹⁷

Financial Disclosure

Each member of the Board is required to file a Full and Public Disclosure Financial Interests (Form 6), which is the same disclosure required of all elected constitutional officers and candidates for such office.¹⁸

¹² The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

¹³ Section 215.981(1), F.S.

¹⁴ Section 11.45(3), F.S.

¹⁵ Some of the standards of conduct and disclosures in ss. 112.313 and 112.3143(2), F.S., include misuse of public position, solicitation or acceptance of gifts, unauthorized compensation, and voting conflicts.

¹⁶ Section 112.3251, F.S.

¹⁷ Section 1009.971(1), F.S. See ss. 1009.97-1009.988, F.S. The Board is assigned to and administratively housed within the State Board of Administration, but it independently exercises specified powers and duties. *Id.* The Board consists of seven members, composed of the Attorney General, the Chief Financial Officer, the Chancellor of the State University System, the Chancellor of the Division of Florida Colleges, and three members appointed by the Governor and subject to confirmation by the Senate. *Id.* at 2.

¹⁸ Section 1009.971(2), F.S.

Stanley G. Tate Florida Prepaid College Foundation

In 1990, the Legislature authorized the Board to establish a DSO.¹⁹ The Board subsequently established the Stanley G. Tate Florida Prepaid College Foundation (Foundation) to provide scholarships to students who may not have otherwise had the opportunity to go to college.²⁰

The Foundation administers the Florida Prepaid Tuition Scholarship Program (Scholarship Tuition for At-Risk Students, or STARS Program).²¹ This program provides economically disadvantaged youth with prepaid postsecondary tuition scholarships.²²

The Foundation has established additional scholarship programs, with Board approval, which include the Black History Month Scholarship, Hispanic Heritage Month Scholarship, and National Mortgage Settlement Dormitory Project.²³

Legislative Review: Findings and Recommendations

Senate professional staff reviewed documents related to the Foundation for compliance with the authorizing and accountability statutes. Findings and recommendations are summarized below.

Foundation's Compliance under Authorizing Statute

The Foundation:²⁴

- Must be incorporated as a not-for-profit corporation under law, which requires initial filing of articles of incorporation and subsequent filing of sworn annual reports with the Department of State.²⁵
- Must be organized exclusively to receive, hold, invest, and administer property and to make expenditures on behalf of the board.
- Must be certified by the Board as operating in a manner consistent with the goals of the board and in the best interest of the state.
- Is subject to the public meetings and public records requirements in law.²⁶
- Must comply with state law, which requires each DSO and CSO with annual expenditures in excess of \$100,000 to provide annually for an independent financial audit.²⁷

The Foundation appears to comply with the authorizing statutory requirements.

¹⁹ Section 1009.983(1), F.S.; Stanley G. Tate Florida Prepaid College Foundation, *2015 Annual Report*, available at http://www.itppv.com/documents/pdf/foundation_2015_annual_report_web.pdf, at 1.

²⁰ Stanley G. Tate Florida Prepaid College Foundation, *2015 Annual Report*, available at http://www.itppv.com/documents/pdf/foundation_2015_annual_report_web.pdf, at 3.

²¹ Sections 1009.983(8), 1009.984, F.S.; Stanley G. Tate Florida Prepaid College Foundation, *2015 Annual Report*, available at http://www.itppv.com/documents/pdf/foundation_2015_annual_report_web.pdf, at 4.

²² Section 1009.984, F.S.

²³ Stanley G. Tate Florida Prepaid College Foundation, *2015 Annual Report*, available at http://www.itppv.com/documents/pdf/foundation_2015_annual_report_web.pdf, at 13-14.

²⁴ Section 1009.983, F.S.

²⁵ *Id.* at (1)(a). Not-for-profit corporations are incorporated under Chapter 617, F.S.; Articles of Incorporation are required by s. 617.0202, F.S., and annual reports are required by s. 617.1622, F.S.

²⁶ Section 1009.983(4), F.S. See also s. 24, Art. I of the State Constitution, ch. 119, F.S., and s. 286.011, F.S.

²⁷ Section 215.981, F.S.

Foundation's Compliance under Accountability Statute

- Each DSO is required to annually provide to the appropriate agency specified information by August 1.²⁸
 - Finding: The Foundation appears to have provided the required information to the Board by the statutory deadline.²⁹
- Each agency must submit an annual report by August 15 of each year with the information received from the DSO or CSO, which contains a recommendation for continuing, terminating, or modifying the agency's association with the DSO or CSO, and the rationale for doing so.³⁰
 - Finding: The Board appears to have submitted its annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OPPAGA, along with the Board's recommendation and rationale for continuing the Foundation as required by law by the statutory deadline.³¹
- Each agency must make the information received from each DSO or CSO available to the public through the agency's website.³² If the DSO or CSO maintains its own website, the agency must provide a link on its website to the DSO's or CSO's website.³³
 - Finding: The Board appears to have complied with the statutory requirements.³⁴
- Any contracts between an agency and a DSO or CSO must be contingent upon the DSO or CSO's submission and posting of the required information.³⁵ If the DSO or CSO fails to submit the required information for two consecutive years, the agency head must terminate the contract.³⁶
 - Finding: The contract between the Board and Foundation, effective December 9, 2016 through December 9, 2021, contains the language necessary for compliance with current law. However, the executed contract contains an error concerning the relevant statutory reference to the DSO accountability statute.³⁷
 - Recommendation: The Board should amend its contract with the Foundation to reflect the proper statutory reference.³⁸

III. Effect of Proposed Changes:

The bill modifies the financial interest disclosure requirement for certain members of the Florida Prepaid College Board and extends the repeal date for the Florida Prepaid College Board's direct-support organization (DSO) from October 1, 2017 to October 1, 2022.

²⁸ Section 20.058(1), F.S. See pg. 2 of this analysis.

²⁹ Email, The Stanley G. Tate Florida Prepaid Foundation (Oct. 6, 2016). Email, The Stanley G. Tate Florida Prepaid Foundation (Oct. 19, 2016).

³⁰ Section 20.058(3), F.S.

³¹ Email, The Stanley G. Tate Florida Prepaid Foundation (Oct. 6, 2016).

³² Section 20.058(2), F.S.

³³ *Id.*

³⁴ Florida Prepaid College Board, *Board Reports & Plans*, <http://www.myfloridaprepaid.com/who-we-are/about-the-board/board-reports-and-plans/> (last visited March 20, 2017).

³⁵ Section 20.058(4), F.S.

³⁶ *Id.*

³⁷ Email, The Stanley G. Tate Florida Prepaid Foundation (March 15, 2017). Foundation staff reported that they intend to amend the contract with the Florida College Prepaid Board to include the proper statutory reference. *Id.*

³⁸ Email, The Stanley G. Tate Florida Prepaid Foundation (Feb. 24, 2017).

Section 1 modifies the financial interest disclosure requirement to specify that certain members of the Florida Prepaid College Board (e.g., Chancellor of the State University System and Chancellor of the Florida College System or an individual appointed by the Governor who is not a constitutional officer) must file the Statement of Financial Interest (Form 1) rather than the currently required Full and Public Disclosure of Financial Interests (Form 6). This is consistent with the requirement for members of other similar boards.³⁹

Section 2 extends the repeal date of the DSO to October 1, 2022. This extension allows for the continuation of the Florida Prepaid Tuition Scholarship Program (Scholarship Tuition for At-Risk Students, or STARS Program) and other scholarship programs for Florida students, which include, but are not limited to, the Black History Month Scholarship, Hispanic Heritage Month Scholarship, and National Mortgage Settlement Dormitory Project Scholarship.⁴⁰

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Florida Prepaid College Foundation (Foundation) has awarded more than 42,000 college scholarships since its inception.⁴¹ More than 23,000 students have attended college using scholarship benefits awarded by the Foundation.⁴²

³⁹ Section 112.3145(1)(a), F.S.

⁴⁰ The Stanley G. Tate Florida Prepaid Foundation, *2017 Agency Legislative Bill Analysis for SB 896* (March 7, 2017), at 1.

⁴¹ The Stanley G. Tate Florida Prepaid Foundation, *2017 Agency Legislative Bill Analysis for SB 896* (March 7, 2017), at (1).

⁴² *Id.* at (2).

C. Government Sector Impact:

This bill has no direct impact on state revenues or expenditures. As background, the Legislature appropriated \$7 million to support the Florida Prepaid Tuition Scholarship Program, administered by the Foundation, in the 2016-2017 General Appropriation Act.⁴³ SB 2500, the Senate General Appropriations Act for the 2017-2018 Fiscal Year, also appropriates \$7 million for the Florida Prepaid Tuition Scholarship Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1009.971 and 1009.983.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS/CS by Appropriations on April 20, 2017:

The committee substitute modifies the financial interest disclosure requirement to specify that certain members of the Florida Prepaid College Board (e.g., Chancellor of the State University System and Chancellor of the Florida College System or an individual appointed by the Governor who is not a constitutional officer) must file the Statement of Financial Interest (Form 1) rather than the currently required Full and Public Disclosure of Financial Interests (Form 6).

CS by Education on March 21, 2017:

The committee substitute corrects the enacting clause to reflect the statutory name of the Florida Prepaid College Board.

B. Amendments:

None.

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

⁴³ Specific appropriation 71, s. 2, ch. 2016-66, L.O.F

By the Committee on Education; and Senator Simmons

581-02684-17

2017896c1

1 A bill to be entitled
2 An act relating to the direct-support organization for
3 the Florida Prepaid College Board; amending s.
4 1009.983, F.S.; extending the repeal date of the
5 direct-support organization for the Florida Prepaid
6 College Board; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsection (9) of section 1009.983, Florida
11 Statutes, is amended to read:
12 1009.983 Direct-support organization; authority.-
13 (9) This section is repealed October 1, 2022 ~~2017~~, unless
14 reviewed and saved from repeal by the Legislature.
15 Section 2. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 14, 2017

I respectfully request that **Senate Bill 896**, relating to Direct-support Organization for the Florida Prepaid College Board, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 9

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/CS/SB 986 (824078)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Stargel

SUBJECT: Department of Financial Services

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sanders</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 986 makes various changes to statutes relating to the Department of Financial Services (DFS). The bill addresses clean-up issues at the Department of Financial Services within the Divisions of Treasury, Accounting and Auditing, State Fire Marshal, Agent and Agency Services and Risk Management.

The bill:

- Renames the Treasury Investment Committee as the Treasury Investment Council within the Division of Treasury and provides for the duties of the Council;
- Applies certain requirements relating to payments, warrants, and invoices to payments made in relation to certain agreements funded with federal or state assistance;
- Updates the 1991 Boiler Safety Act (Act) as to installation requirements, who can conduct inspections of boilers in public assembly locations, continuing education of inspectors, and changes criminal penalties to administrative fines for violations of the Act;
- Authorizes the DFS the authority to use appropriated funds for the purpose of professional development and training courses;
- Allows licensed individuals who are active participants in insurance associations to annually earn continuing education credits;
- Provides that the Division of Agent and Agency Services may not issue a license until an applicant with a criminal history has paid all fines, restitution, and court costs;
- Removes the statute of limitations for actions relating to the Holocaust Victims Assistance Program;

- Allows for the use of firefighter's confidential information for the purposes of certain studies;
- Removes a requirement for an individual to send a written notice of claim or serve a summons on the DFS for an action against a county.

The bill has an indeterminate impact on state revenue and expenditures. The DFS may see an increase in compliance and administrative litigation as its regulatory role significantly increases.¹

The bill has an effective date of July 1, 2017.

II. Present Situation:

The Chief Financial Officer (CFO) is a member of the Cabinet and serves as the chief fiscal officer of the state. The CFO is agency head of the DFS. The DFS performs a wide variety of functions. For example, the DFS processes various state payments, warrants, and invoices. It administers the Boiler Safety Act.² The DFS regulates insurance agencies, agents, and insurance adjusters. The following sections summarize various issues addressed by PCS/CS/SB 986.

Treasury Investment Committee

Section 17.575, F.S., creates the Treasury Investment Committee (TIC) within the DFS' Division of Treasury. It consists of five members appointed by the CFO who possess special knowledge, experience, and familiarity in finance, investments, or accounting. The TIC administers the Treasury Investment Program consistent with policies approved by the CFO for deposits and investments of public funds. Section 1 of the bill changes this program.

Payment of Vendor Invoices by the State

Section 215.422, F.S., governs payments by state agencies or the judicial branch to vendors. An invoice submitted to a state agency or the judicial branch must be:

- Recorded in the financial systems of the state;
- Approved for payment by the agency or the judicial branch; and,
- Filed with the CFO no later than 20 days after receipt of the invoice, unless there is a dispute or some other reason not to pay.³

In most cases, the DFS must approve payment of an invoice no later than 10 days after the agency the approved invoice.

If a warrant in payment of an invoice is not issued within 40 days after receipt of the invoice and receipt, inspection, and approval of the goods and services, the agency or judicial branch must pay to the vendor interest at the statutory interest rate.

¹ The Department of Financial Services, *Senate Bill 986 Fiscal Analysis* (on file with the Senate Appropriations Subcommittee on General Government).

² Sections 554.1011-554.115, F.S.

³ Section 215.422(1), F.S.

The interest requirements do not apply to payments for agreements funded with state or federal financial assistance pursuant to s. 215.971, F.S.

The Boiler Safety Act

A boiler is “a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam is superheated, or any combination of these functions is accomplished, under pressure or vacuum, for use external to itself, by the direct application of energy from the combustion of fuels or from electricity or solar energy. The term “boiler” includes fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.”⁴ Florida’s Boiler Safety Act (Act) provides requirements for installation of boilers in public assembly locations, boiler code requirements, education requirements, and penalties for violations. The Act has remained essentially unchanged since 1991.

The DFS administers the Act. Sections 3-17 of this bill make changes to the Act.

Regulation of Insurance Agents and Adjusters

The DFS’ Division of Insurance Agents and Agency Services regulates insurance agents, agencies, and adjusters. The regulation includes licensing, disciplinary actions, and education. Sections 18-30 of the bill revise provisions relating to agent and adjuster regulation.

Notice of Actions against the State

Section 768.28, F.S., is the state’s waiver of sovereign immunity statute. The DFS’ Division of Risk Management is responsible for the management of claims reported by or against state agencies and universities for coverage under the self-insurance fund known as the "State Risk Management Trust Fund."⁵ Section 768.28, F.S., requires notice or service on DFS in certain situations. Section 33 of the bill amends those provisions.

III. Effect of Proposed Changes:

Treasury Investment Council

Section 1 amends s. 17.575, F.S. This section changes the name of the Treasury Investment Committee to the Treasury Investment Council (council). It requires that three of the five council members be from the private sector. Current members serve at the pleasure of the CFO. The bill changes the term to four years from the date of appointment but retains the ability of the CFO to remove members. The bill requires the council to review the investments required by s. 17.57, F.S., and meet with staff of the Division of Treasury at least biannually. The council will provide recommendations to the Division of Treasury and the CFO regarding investment policy, strategy, and procedures. It provides that council members may receive per diem and travel expenses pursuant to s. 112.061, F.S.

⁴ Section 554.1021(1), F.S.

⁵ <http://www.myfloridacfo.com/Division/Risk/> (last accessed March 10, 2017).

Payment of Vendor Invoices by the State

Section 2 provides that the payment requirements of s. 215.422, F.S., including payment of interest for late payments, apply to agreements involving state or federal financial assistance in s. 215.971, F.S.

In the event the agreements are not paid timely, the Division of Auditing may have a slight impact to processing a few additional interest payments and vouchers.⁶

Boiler Safety Act (Sections 3 through 18)

The bill amends and reorganizes the Boiler Safety Act.

Section 3 amends s. 554.1021, F.S., to define “authorized inspection agency” so that various entities are allowed to conduct boiler inspections if their boiler inspectors hold valid certificates of compliance.

Entities include local governments or governmental subdivisions that have adopted into law the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers⁷ and National Board Inspection Code for the construction, installation, inspection, maintenance, and repair of boilers to regulate boilers in public assembly locations.⁸ The bill includes insurers authorized to transact boiler and machinery insurance in Florida and inspecting agencies accredited in accordance with the National Board of Boiler and Pressure Vessel Inspector’s program entitled “Accreditation of Authorized Inspection Agencies (AIA) Performing Inservice or Repair/Alteration Inspection Activities,” document number NB-369, as authorized inspection agencies.⁹

This section defines the following terms:

- “Inservice boiler” is a boiler placed in use after test firing and required inspections have been satisfactorily completed;
- “Operating boiler” means a boiler connected and ready for use;
- “Secured boiler” means a boiler that has been:
 - Physically disconnected from the system, including disconnection from fuel, water, steam, electricity and stack;
 - Locked out and tagged out in accordance with the Occupational Safety and Health Administration’s standard relating to the control of hazardous energy and lockout or tagout in 29 C.F.R. s. 1910.147, as adopted by rule of this department.
- “Authorized inspection agency” means:
 - Any county, municipality, town or other governmental subdivision that has adopted into law the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers (ASME) and the National Board Inspection Code for the construction,

⁶ Department of Financial Services, *Senate Bill 986 Fiscal Analysis* (on file with the Senate Appropriations Subcommittee on General Government).

⁷ https://www.asme.org/getmedia/1adfc3df-7dab-44bf-a078-8b1c7d60bf0d/ASME_BPVC_2013-Brochure.aspx (last accessed March 10, 2017).

⁸ <http://www.nationalboard.org/Index.aspx?pageID=4> (last accessed March 10, 2017).

⁹ <https://www.nationalboard.org/SiteDocuments/Commissioned%20Inspectors/NB-369.pdf> (last accessed March 10, 2017).

- installation, inspection, maintenance, and repair of boilers to regulate boilers in public assembly locations, and whose boiler inspectors hold valid certificates of competency in accordance with s. 554.104, F.S.;
- An insurer authorized by a subsisting certificate of authority, issued by the OIR, to transact boiler and machinery insurance in this state, and whose boiler inspectors hold valid certificates of competency in accordance with s. 554.102, F.S.; and,
 - An inspecting agency accredited in accordance with the National Board of Boiler and Pressure Vessel Inspector's program entitled "Accreditation of Authorized Inspection Agencies (AIA) Performing Inservice or Repair/Alteration Inspection Activities," document number NB-369, and whose boiler inspectors hold valid certificates of competency in accordance with s. 554,104, F.S. The department shall by rule require an inspection agency authorized pursuant to this paragraph to maintain financial security adequate to indemnify the owner of the boiler if such agency's negligence or failure to inspect an uninsured boiler results in a loss. Such inspection agency may inspect uninsured boilers or, at the direction of an insurance company, may inspect a boiler insured by that insurance company; and
 - "Boiler insurance company" means a company authorized by a subsisting certificate of authority, issued by the OIR, to transact boiler and machinery insurance in this state.

Section 4 amends s. 554.103, F.S., to require the installer of any boiler place in use after January 1, 2018, to apply for a permit to install the boiler with the chief boiler inspector.¹⁰ The application must be on a form adopted by the DFS by rule. Before installing a boiler, the installer's application must include the ASME manufacturer's data report and other information required by law.¹¹ The installer must contact the chief boiler inspector to schedule an inspection no later than seven days before the boiler is placed into service.

Current law allows the DFS, at its discretion, to authorize the construction, installation, and operation of boilers of special design or construction which do not meet the specific requirements of the State Boiler Code (Code), but which are consistent with the safety objectives of the Code.

Section 5 amends s. 554.104, F.S. The bill amends the certification system for boiler inspectors. Most of the amended s. 554.104, F.S., is current law in ss. 554.112 and 554.113, F.S. **Section 14** repeals those sections. The bill provides that a person may not be, act as, or advertise or hold himself or herself out to be a boiler inspector unless he or she holds a certificate of competency issued by the DFS. A person seeking certification must apply to take the certification examination.¹² A person may take the certification examination if:

- Has submitted the application for examination and the required fee;
- Is at least 18 years of age;
- Has completed the 2-hour training course; and
- Has at least 3 years of experience in the construction, installation, inspection, operation, maintenance, or repair of high pressure, high temperature water boilers; or

¹⁰ The chief boiler inspector is appointed by the CFO pursuant to s. 554.105, F.S.

¹¹ Current law requires the information at least 90 days after the boiler is placed in service. s. 554.103(2), F.S.

¹² The examination required by the bill is the examination administered by the National Board of Boiler and Pressure Vessel Inspectors.

- Meets the requirements to qualify as a commissioned inspector by the National Board of Boiler and Pressure Vessel Inspectors as set forth in NB-263, RCI-1, Rules Commissioned Inspectors, as adopted by DFS rule.

The bill creates a two-hour training course requirement. The bill requires the DFS to adopt by rule a two-hour training course on the requirements of the Boiler Safety Act and related rules. DFS shall make the course available online and may make the course available in a classroom. The bill allows a boiler insurance company to include the DFS course as part of its training of boiler inspector students. Any boiler insurance company who makes the DFS course part of its in-house training must indicate the student received such training at the time of application for certification of competency.

The chief boiler inspection must issue a certificate of competency to an applicant who meets the qualifications, passes the required examination, and obtains a commission from the National Board of Boiler and Pressure Vessel Inspectors.

A certificate of competency expires on December 31 of each year and may be renewed upon the filing of a renewal application with the DFS. If available on the DFS website, the applicant must use a secured electronic application.

The bill moves the current language of s. 554.104, F.S., relating to the approval of boilers of special design to s. 554.103, F.S.

Section 6 amends s. 554.105, F.S., to change the title “chief inspector” to “chief boiler inspector” and makes technical changes.

Section 7 amends s. 554.106, F.S., to change the title “deputy inspector” to “deputy boiler inspector.” It provides that deputy boiler inspectors will conduct inspections of uninsured boilers and engage in public outreach and other duties as assigned by the chief boiler inspector.

Section 8 amends s. 554.107, F.S., to change the title of “special inspector” to “special boiler inspector” and makes conforming changes for consistency with other changes made by the bill.

Section 9 amends s. 554.108, F.S., requires inspections of boilers in public assembly locations within 30 days after the expiration of the boiler’s certificate of operation and provides reporting requirements.

This section exempts potable hot water supply boiler with a heat input of 200,000 British thermal units (Btu) per hour and above, up to a heat input not exceeding 400,000 Btu per hour, from inspection. The exemption clarifies the boiler must be stamped with ASME code symbol “HLW” and the boiler’s ASME data report must be filed as required under s. 554.103(2), F.S.

This section provides if the chief boiler inspector, deputy boiler inspector, or special boiler inspector discovers a violation of any provision of the State Boiler Code, the inspector must promptly notify the owner or user or state as to what repairs or other corrective measures are needed to bring the boiler into compliance. This section gives DFS rulemaking authority to adopt

forms related written inspection reports. The certificate inspection report must list all violations of the State Boiler Code and any conditions that may adversely affect the operation of the boiler. The bill authorizes the agency responsible for conducting inspections to conduct follow up inspections, not more than every six months, for previously identified code violations until correction of the violation. The inspector must indicate on the report if correction of the code violation has occurred.

If a chief boiler inspector determines a boiler cannot be safely operated, the boiler is deemed an imminent danger to the health, safety and welfare of the public and is immediately shut down. The chief boiler inspector shall attach a tag to the boiler indicating the boiler has been shut down due to unsafe conditions. The boiler must remain shut down until such time as the chief boiler inspector or deputy boiler inspector determines it may be safely operated. The DFS may adopt rules necessary to administer this section.

Section 10 creates s. 554.1081, F.S. This section provides for boiler inspections by insurance companies and local governmental agencies. This section authorizes an insurance company insuring a boiler located in a public assembly location to inspect or contract with an authorized inspection agency the insured boiler. The insurance company must file annual reports providing the name of any authorized inspection agency performing any required boiler inspections on its behalf to the DFS. The insurance company shall actively monitor insured boilers to ensure that inspections are conducted as required by this chapter.

This section allows any county, municipality, town or other governmental subdivision to inspect boilers if it has adopted into law the Boiler and Pressure Vessel Code of the ASME and the National Board Inspection Code for the construction, installation, inspection, maintenance, and repair of boilers to regulate boilers in public assembly locations. These inspections must be conducted by special boiler inspectors in accordance with this chapter.

Section 11 amends s. 554.109, F.S., to strike provisions relating to inspections by insurers or local governments because those provisions are in the newly created s. 554.1081, F.S. The bill also strikes unnecessary provisions related to water supply boilers and water heaters.

Section 12 amends s. 554.1101, F.S., to require boiler insurance companies to notify the chief boiler inspector within 30 days after the issuance of a new or renewal boiler and machinery insurance policy, or the cancellation or nonrenewal of a boiler and machinery insurance policy.

Section 13 amends s. 554.111, F.S., relating to fees paid to the DFS for certification inspections, applications, and examinations. The bill requires that an application for a boiler permit include the certificate inspection fee. Currently, collection of the fee is after the inspection. The bill does not raise any of the current fees.

Section 14 repeals ss. 554.114 and 554.113, Florida Statutes. This section removes the requirement for certification examination by the DFS, as inspectors are required to take an examination conducted by the National Board of Boiler and Pressure Vessel Inspectors.¹³

¹³ The Department of Financial Services, *Senate Bill 986 Fiscal Analysis* (on file with the Senate Appropriations Subcommittee on General Government).

Section 15 amends s. 554.114, F.S., to remove criminal penalties for violations of the Act. Current law provides that specified violations are a second-degree misdemeanor. This bill provides for administrative fines of \$10 per day for the first 10 days of noncompliance, \$50 per day for the next 20 days of noncompliance, and \$100 per day for subsequent days. Violations that can lead to financial penalties are:

- Operating a boiler without a valid certificate;
- Using a certificate for any boiler other than the boiler for which it was intended; and
- Inspecting a boiler without holding a valid certificate.

The bill also provides penalties if boiler insurance companies or authorized inspection agencies fail to comply with inspection requirements.

Section 16 makes conforming changes to s. 554.115, F.S.

Section 17 creates s. 554.1151, F.S., to give the DFS discretion to impose administrative fines in lieu of or in addition to revocation or suspension of certificates in s. 554.115, F.S. Fine amounts are up to \$500 for non-willful violations and up to \$3,500 for willful violations. It provides for suspension or revocation if payment of fines is not within 30 or 90 days.

Under current law, the punishment for failure to have a valid Certificate of Operation for an operating boiler is a second degree misdemeanor and requires notification to the chief inspector and the appropriate State Attorney. Oftentimes the State Attorney declines prosecution of these violations due to heavy caseloads within the circuit.¹⁴

Regulation of Insurance Agents and Adjusters

Sections 19 and 25 amend ss. 626.015 and 626.2815, F.S., respectively, relating to continuing education requirements for licensees. The bill provides that “active participants” in “associations” may receive two hours of continuing education credit each calendar year. The bill defines “active participants” as a member who attends four or more hours of association activities each year. It defines “association” to include:

- Florida Association of Insurance Agents (FAIA);
- National Association of Insurance and Financial Advisors (NAIFA);
- Florida Association of Health Underwriters (FAHU);
- Latin American Association of Insurance Agencies (LAAIA);
- Florida Association of Public Insurance Adjusters (FAPIA);
- Florida Bail Agents Association (FBAA); or
- Professional Bail Agents of the United States (PBUS).

Section 20 amends s. 626.207, F.S. Current law provides that persons with certain criminal convictions¹⁵ are barred from applying for licensure for licenses regulated under ch. 626, F.S.,

¹⁴ *Id.*

¹⁵ When “conviction” is used when discussing DFS agent and agency regulatory statutes in this bill analysis, it means a conviction or the entry of guilty or nolo contendere plea regardless of whether adjudication was withheld.

for specified periods of time.¹⁶ The bill allows such persons to apply for licensure but provides that such persons are barred from licensure.

The time a person is barred from applying for licensure begins to run upon completion of the criminal sentence including the payment of all fines, restitution, and court costs.¹⁷ This provides that the time begins to run upon completion of an applicant's criminal sentence (including the end of any period of probation or community control) and provides that a license cannot be issued until all fines, restitution, and court costs are paid. This will allow applicants who pay their restitution during, for example, a period of probation, to be licensed sooner.

In *Kauk v. Department of Financial Services*,¹⁸ the court considered whether the *per se* bar in s. 626.207, F.S., applied to someone who had had his civil rights restored through executive clemency. The court held that the DFS could not impose a bar against Kauk because Kauk had had his civil restored and a hearing officer had found Kauk to be a "citizen fully rehabilitated."¹⁹ This bill codifies the result of *Kauk*. It provides that the time bars in s. 626.207, F.S., do not apply to someone who has had his civil rights restored or has been issued a pardon. The bill does not require the DFS to issue a license if a person has been granted a pardon or had his or her civil rights restored. Rather, it provides the DFS cannot consider the finding of guilt or entry of the plea for which clemency was granted as grounds to deny the application. **Section 24** makes similar changes to the law relating to health insurance navigators in s. 626.9954, F.S., so that the same disqualifying periods and clemency rules will apply to insurance agents and to navigators.

Section 626.611, F.S., provides grounds for which the DFS must deny an application for licensure or appointment and grounds for which it must suspend or revoke an existing license or appointment. Section 626.621, F.S., provides grounds for which the DFS may refuse to issue a license or appointment, or may suspend or revoke an existing license or appointment. These sections apply to applicants for licensure or license renewal, agents, adjusters, customer representatives, service representatives, and managing general agents. Section 626.611, F.S., currently requires a suspension or revocation for convictions of felonies involving moral turpitude.

Section 21 amends s. 626.221, F.S., to provide that an applicant for an all-lines adjuster license who holds the Universal Claim Certification from the Claims and Litigation Management Alliance is exempt from the examination requirements.

Section 22 amends s. 626.2815, to provide that any part of the Claims and Litigation Management (CLM) Universal Claims Certification (UCC) professional designation can provide up to 19 hours of elective continuing education and 5 hours of the update course required of agents and adjusters.

¹⁶ Persons and entities licensed by the DFS include agents, agencies, adjusters, adjusting firms, customer representatives, or managing general agents.

¹⁷ Section 626.207(6), F.S.

¹⁸ 131 So.3d 805 (Fla. 1st DCA 2014).

¹⁹ 131 So.3d at 808.

Section 23 amends s. 626.8734, F.S., to provide that an applicant holding the Universal Claims Certification (UCC) from the Claims and Litigation Management Alliance (CLM) is exempt from the examination requirements to become a nonresident all-lines adjuster.

Section 26 amends s. 626.611, F.S., to require suspension or revocation for all felonies. This section also removes the moral turpitude provision in s. 626.611(n), F.S.

Section 27 amends s. 626.621, F.S., to provide that license denial, license revocation, or suspension is discretionary with the DFS if a state agency, court, other state, any nation, or possession or district of the United States takes regulatory action against a license to practice a regulated profession or business.

Sections 28 and 29 amend s. 626.7845, F.S., and s. 626.8305, F.S., respectively, to allow trustees to advise persons, settlors, or beneficiaries regarding their interests in a trust regarding life or health insurance plans.

Section 30 amends s. 626.861, F.S., to allow a regular employee of a property insurer handling claims to adjust claims with respect to residential property insurance when the sublimit coverage does not exceed \$500.

Holocaust Victims

Section 626.9543, F.S., provides that any insurer doing business in this state, in receipt of a claim from a Holocaust victim or from a beneficiary, descendant, or heir of a Holocaust victim, must:

- Diligently and expeditiously investigate all such claims;
- Allow such claimants to meet a reasonable, not unduly restrictive, standard of proof to substantiate a claim, pursuant to standards established by the DFS; and
- Permit claims irrespective of any statute of limitations or notice requirements imposed by any insurance policy issued, provided submission of the claim is on or before July 1, 2018.

Section 31 amends s. 626.9543 to remove the July 1, 2018, claims deadline.

The bill provides that actions brought by Holocaust victims or by a beneficiary, heir, or a descendant of a Holocaust victim seeking proceeds of an insurance policy issued or in effect between 1920 and 1945, inclusive, may not be dismissed for failure to comply with the statute of limitations or laches. Current law provides that such action must commence on or before July 1, 2018.

This section authorizes the DFS to continue to assist the approximate 12,500 existing Holocaust victims in filing potential and actual insurance claims.²⁰

²⁰ Department of Financial Regulation, *Senate Bill 986 Fiscal Analysis* (on file with the Senate Appropriations Subcommittee on General Government).

Notice of Actions against the State

Section 33 amends s. 768.28, F.S. Section 768.28, F.S., is the state's waiver of sovereign immunity. Under current law, s. 768.21(6)(a), F.S., provides that an action cannot be initiated against the state or one of its agencies or subdivisions unless a claimant presents the claim in writing to the appropriate agency and to the DFS. A claimant does not have to provide notice to the DFS if the claim is against a municipality or the Florida Space Authority. DFS reports that it receives many notices when claimants make claims against counties. The DFS Division of Risk Management is not involved in claims against counties so the DFS believes it is not necessary that DFS receive the notice. The bill provides that a claimant does not have to present notice to the DFS if the claim is against a county.

Similarly, s. 768.21(7), F.S., requires service of process on DFS unless the case is brought pursuant to s. 768.28, F.S., process must be served on the agency head and DFS except for cases where the defendant is a municipality or the Florida Space Authority. The bill provides that service is not required on the DFS if the defendant is a county. The DFS' Division of Risk Management could reallocate resources expended to process in excess of 7,500 subdivision notices per year, which fall outside the coverage provided by the Risk Management Insurance Trust Fund.²¹

Miscellaneous Provisions

Section 18 of this bill amends s. 624.307, F.S., to provide authority to specific divisions²² within the DFS to expend funds, subject to availability, for professional development of staff. The bill does not provide an appropriation.

Currently, The Office of Insurance Regulation may expend funds, subject to availability, for the professional development of its staff. Expenditures may include dues for professional organizations, fees for examinations leading to professional designations, and relevant training courses.

Section 32 amends s. 633.516, F.S., relating to occupational disease studies of firefighter or persons in other fire-related fields. The bill provides that the DFS may share, under controlled or secure circumstances, confidential information, including a social security number, with the contracted entity for the study.²³

Section 34 amends s. 288.706, F.S., to change statutory citations to conform to changes made in Section 2 of the bill.

Sections 35 and 36 amend ss. 626.7315 and 627.351, F.S., to change statutory citations to conform to the changes made in Section 19 of the bill.

Section 37 provides an effective date of July 1, 2017.

²¹ *Id.*

²² *Id.* DFS identifies these divisions as Division of Insurance Agent & Agency Services, Consumer Services, and Rehabilitation and Liquidation and the Office of the Insurance Consumer.

²³ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The impact on the private sector from changes to the Boiler Safety Act is indeterminate.

C. Government Sector Impact:

The overall impact of this bill is indeterminate on state revenues and expenditures. The changes to the Boiler Safety Act may have an indeterminate fiscal impact on the DFS.²⁴ The DFS may see a slight increase in revenue if the levy of fines occur against boiler owners who fail to correct compliance issues. The DFS may have additional expenses (relating to professional development of DFS staff) and workload (relating to agreements involving state or federal financial assistance), but these additional costs will be absorbed within current resources.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 17.575, 215.422, 554.1021, 554.103, 554.104, 554.105, 554.106, 554.107, 554.108, 554.109, 554.1101, 554.111, 554.114, 554.115, 624.307, 626.015, 626.207, 626.221, 626.2815, 626.8734, 626.9954,

²⁴ *Id.*

²⁵ *Id.*

626.2815, 626.611, 626.621, 626.7845, 626.8305, 626.861, 626.8734, 626.9543, 633.516, 768.28, 288.706, 626.7315, and 627.351.

This bill creates the following sections of the Florida Statutes: 554.1081 and 554.1151.

This bill repeals the following sections of the Florida Statutes: 554.112 and 554.113.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on March 29, 2017:

The CS amends the definition of “authorized inspection agency” to require an agency to maintain financial security adequate to indemnify the owner of the boiler if the agency’s negligence or failure to inspect results in a loss. The CS removes a requirement that an insurer remit a fee when it inspects a boiler. It changes the time for reinspection certain boilers from four to six months. The CS provides insurers will not be penalized for failure to inspect if the failure was caused by certain acts of the boiler owner. It removes a provision requiring annual reports by insurers to the chief boiler inspector.

CS by Banking and Insurance on March 14, 2017:

The CS provides that claimants instituting civil actions against counties do not have to give notice to or serve the DFS. It also provides that some of the boiler installation requirements created by the bill are not effective until January 1, 2018.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/20/2017	.	
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The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete line 1943

and insert:

Section 37. Effective October 1, 2017, section 633.217, Florida Statutes, is created to read:

633.217 Influencing a firesafety inspector.-

(1) A person may not influence a firesafety inspector by:

(a) Threatening, coercing, tricking, persuading,

interfering with, or otherwise influencing, or attempting to



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11 threaten, coerce, trick, persuade, interfere with, or otherwise
12 attempting to influence, the firesafety inspector into violating
13 any provision of the Florida Fire Prevention Code, any rule
14 adopted by the State Fire Marshal, or any provision of this
15 chapter.

16 (b) Offering any compensation to the firesafety inspector
17 to induce a violation of the Florida Fire Prevention Code, any
18 rule adopted by the State Fire Marshal, or any provision of this
19 chapter.

20 (2) A person who violates subsection (1) commits a
21 misdemeanor of the first degree, punishable as provided in s.
22 775.082 or s. 775.083. A person who violates paragraph (1) (a)
23 after a previous conviction for violating paragraph (1) (a)
24 commits a felony of the third degree, punishable as provided in
25 s. 775.082 or s. 775.083.

26 Section 38. Except as otherwise expressly provided in this
27 act, this act shall take effect July 1, 2017.

28
29 ===== T I T L E A M E N D M E N T =====

30 And the title is amended as follows:

31 Delete lines 169 - 170

32 and insert:

33 627.351, F.S.; conforming cross-references; creating
34 s. 633.217, F.S.; prohibiting a person from committing
35 or attempting to commit certain acts to influence
36 firesafety inspectors; providing criminal penalties;
37 providing effective dates.



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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to the Department of Financial Services; amending s. 17.575, F.S.; replacing, within the Division of Treasury, the Treasury Investment Committee with the Treasury Investment Council; specifying the composition and term length of members; specifying duties of the council; providing that members shall serve without additional compensation or honorarium but may receive per diem and travel expense reimbursement; amending s. 215.422, F.S.; providing applicability of certain requirements relating to payments, warrants, and invoices to payments made in relation to certain agreements funded with federal or state assistance; reordering and amending s. 554.1021, F.S.; defining and redefining terms; requiring the Department of Financial Services to adopt rules; authorizing the inspection of certain boilers by authorized inspection agencies; amending s. 554.103, F.S.; requiring, rather than authorizing, the department to adopt amendments and interpretations of a specified code into the State Boiler Code; revising requirements that installers, rather than owners, must comply with before installing a boiler that is placed in use after a specified date; authorizing the department to adopt rules; conforming provisions to changes made by the act; amending s. 554.104, F.S.; deleting a provision relating to boilers of special



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design which is recreated in s. 554.103, F.S.; requiring certification of boiler inspectors; requiring an application for a certification examination; specifying qualifications and requirements for the certification examination; requiring the department to adopt a specified training course; providing authorized methods and requirements for the training course; requiring the chief boiler inspector to issue a certificate of competency to a person meeting certain requirements; providing procedures for renewing a certificate; authorizing the department to adopt rules; amending s. 554.105, F.S.; renaming the chief inspector as the chief boiler inspector; revising requirements for the department through the state boiler inspection program; amending s. 554.106, F.S.; renaming deputy inspectors as deputy boiler inspectors; specifying required and authorized duties of deputy boiler inspectors; amending s. 554.107, F.S.; renaming special inspectors as special boiler inspectors; revising entities that may employ special boiler inspectors; specifying required inspection intervals for special boiler inspectors; amending s. 554.108, F.S.; providing an exemption, under certain conditions, from inspection requirements; specifying duties of an owner or an owner's designee to allow an inspector to conduct inspections; specifying requirements for boiler inspections and inspection reports; revising conditions that require a boiler to be shut down;



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57 revising requirements and procedures for a boiler that
58 must be shut down; providing construction; authorizing
59 the department to adopt rules; creating s. 554.1081,
60 F.S.; revising requirements for boiler inspections by
61 insurance companies and local governmental agencies;
62 amending s. 554.109, F.S.; conforming provisions to
63 changes made by the act; revising boilers that are
64 exempt from regulation under the chapter; revising
65 requirements for certain exempt boilers and water
66 heaters; amending s. 554.1101, F.S.; conforming
67 provisions to changes made by the act; requiring a
68 boiler insurance company to notify, within a specified
69 timeframe, the chief boiler inspector under certain
70 circumstances; requiring a certificateholder to submit
71 a certain certificate of insurance to the chief boiler
72 inspector under certain circumstances; amending s.
73 554.111, F.S.; requiring an application for a boiler
74 permit to include a specified fee; requiring the chief
75 boiler inspector to deposit fines into a specified
76 trust fund; conforming provisions to changes made by
77 the act; repealing ss. 554.112 and 554.113, F.S.,
78 relating to examinations, and certification of
79 inspectors and renewals, respectively; amending s.
80 554.114, F.S.; revising prohibited acts; providing
81 penalties for a boiler insurance company or authorized
82 inspection agency that fails to conduct certain
83 inspections; providing an exception; conforming
84 provisions to changes made by the act; amending s.
85 554.115, F.S.; adding authorized disciplinary actions



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86 for the department; adding specified grounds for
87 disciplinary action against an owner of a boiler;
88 revising grounds for disciplinary action against a
89 boiler inspector; deleting a provision requiring a
90 chief inspector to report certain persons to the state
91 attorney; deleting a provision authorizing certain
92 administrative action by the chief inspector; deleting
93 a provision relating to the duration of a suspended
94 certificate of compliance; creating s. 554.1151, F.S.;
95 authorizing the department to impose specified
96 administrative fines in lieu of or in addition to
97 certain disciplinary actions; authorizing procedures
98 for payment of fines by a certificateholder; requiring
99 a certificate to be revoked under certain
100 circumstances; amending s. 624.307, F.S.; authorizing
101 the department to expend funds for professional
102 development of its employees; amending s. 626.015,
103 F.S.; defining terms; conforming a cross-reference;
104 amending s. 626.207, F.S.; defining the term
105 "applicant"; revising a list of felonies subject to a
106 permanent bar from licensure; revising a condition for
107 when certain disqualifying periods begin; conforming
108 cross-references; providing an exception from a
109 permanent bar on or disqualifying periods for cases of
110 executive clemency; providing construction; amending
111 s. 626.221, F.S.; providing an exception from an
112 examination requirement for an all-lines adjuster
113 license applicant with a specified designation;
114 amending s. 626.2815, F.S.; specifying the education



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115 hours that may be completed to meet continuing
116 education requirements for such a designation;
117 amending s. 626.8734, F.S.; providing an exception
118 from an examination requirement for nonresident all-
119 lines adjuster license applicants who hold certain
120 certifications; amending s. 626.9954, F.S.; revising a
121 list of felonies subject to a permanent bar from
122 licensure; revising conditions for when certain
123 disqualifying periods begin; conforming cross-
124 references; providing an exception from a permanent
125 bar on or disqualifying periods for cases of executive
126 clemency; providing construction; amending s.
127 626.2815, F.S.; authorizing the department to approve
128 a certain number of elective continuing education
129 credits for certain insurance licensees; providing an
130 exception from a certain continuing education
131 requirement for such licensees; amending s. 626.611,
132 F.S.; deleting a condition for the involvement of
133 moral turpitude in felonies or certain crimes in
134 relation to compulsory disciplinary actions by the
135 department against certain entities' licenses or
136 appointments; conforming a cross-reference; amending
137 s. 626.621, F.S.; revising grounds for the
138 department's discretionary refusal, suspension, or
139 revocation of the license or appointment of certain
140 persons; amending s. 626.7845, F.S.; revising an
141 exception to the prohibition against the unlicensed
142 transaction of life insurance; conforming a cross-
143 reference; amending s. 626.8305, F.S.; revising an



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144 exception to the prohibition against the unlicensed
145 transaction of health insurance; conforming a cross-
146 reference; amending s. 626.861, F.S.; authorizing
147 certain insurer employees to adjust specified claim
148 losses or damage; amending s. 626.9543, F.S.; removing
149 the scheduled expiration of a requirement for insurers
150 to permit claims from a Holocaust victim or certain
151 related persons irrespective of certain conditions;
152 removing the scheduled expiration of an exception from
153 statutes of limitations or laches for certain actions
154 brought by Holocaust victims or certain related
155 persons; amending s. 633.516, F.S.; authorizing the
156 Division of State Fire Marshal within the division to
157 contract for studies of, rather than to make a
158 continuous study of, occupational diseases of
159 firefighters; adding persons in other fire-related
160 fields to such studies; authorizing the division to
161 release confidential information of an individual
162 firefighter or a person in another fire-related field
163 to certain parties under certain circumstances;
164 amending s. 768.28, F.S.; providing exceptions in tort
165 claims against a county from requirements that a
166 claimant present the written claim to the department
167 within a specified timeframe and serve process upon
168 the department; amending ss. 288.706, 626.7315, and
169 627.351, F.S.; conforming cross-references; providing
170 an effective date.

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



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Section 1. Section 17.575, Florida Statutes, is amended to read:

17.575 Administration of funds; Treasury Investment Council ~~Committee~~.-

(1) There is created a Treasury Investment Council ~~Committee~~ within the Division of Treasury consisting of at least five members, at least three of whom are professionals from the private sector, who must possess special knowledge, experience, and familiarity in finance, investments, or accounting. The members of the council must ~~committee shall~~ be appointed by and serve at the pleasure of the Chief Financial Officer. Each member shall serve a term of 4 years from the date of appointment. The council ~~committee shall~~ annually elect a chair and vice chair from among its members ~~membership~~.

(2) The council shall review the investments required by s. 17.57; meet with staff of the Division of Treasury at least biannually; and provide recommendations to the Division of Treasury and the Chief Financial Officer regarding investment policy, strategy, and procedures ~~The committee shall administer the Treasury Investment Program consistent with policies approved by the Chief Financial Officer for deposits and investments of public funds. The committee shall also make recommendations regarding investment policy to the Chief Financial Officer.~~

(3) Members of the council shall serve without additional compensation or honorarium, but may receive per diem and reimbursement for travel expenses as provided in s. 112.061 ~~The committee shall submit an annual report outlining its activities~~



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~~and recommendations to the Chief Financial Officer and the Joint Legislative Auditing Committee. The report shall be submitted on August 15, 2009, and annually thereafter.~~

Section 2. Present subsections (14) through (16) of section 215.422, Florida Statutes, are redesignated as subsections (15) through (17), respectively, and a new subsection (14) is added to that section, to read:

215.422 Payments, warrants, and invoices; processing time limits; dispute resolution; agency or judicial branch compliance.-

(14) All requirements set forth in this section apply to payments made in accordance with s. 215.971.

Section 3. Section 554.1021, Florida Statutes, is reordered and amended to read:

554.1021 Definitions.-As used in this chapter, the term ~~ss. 554.1011-554.115~~:

(3) ~~(1)~~ "Boiler" means a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam is superheated, or any combination of these functions is accomplished, under pressure or vacuum, for use external to itself, by the direct application of energy from the combustion of fuels or from electricity or solar energy. The term "boiler" includes fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves. The varieties of boilers are as follows:

(f) ~~(a)~~ "Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig.

(b) "High pressure, high temperature water boiler" means a



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231 water boiler operating at pressures exceeding 160 psig or
232 temperatures exceeding 250 °F.

233 ~~(a)~~~~(e)~~ "Heating boiler" means a steam or vapor boiler
234 operating at pressures not exceeding 15 psig, or a hot water
235 boiler operating at pressures not exceeding 160 psig or
236 temperatures not exceeding 250 °F.

237 ~~(c)~~~~(d)~~ "Hot water supply boiler" means a boiler or a lined
238 storage water heater supplying heated water for use external to
239 itself operating at a pressure not exceeding 160 psig or
240 temperature not exceeding 250 °F.

241 ~~(g)~~~~(e)~~ "Secondhand boiler" means a boiler that has changed
242 ownership and location subsequent to its original installation
243 and use.

244 (d) "Inservice boiler" means a boiler placed in use after
245 test firing and required inspections have been satisfactorily
246 completed.

247 (e) "Operating boiler" means a boiler connected and ready
248 for use.

249 (h) "Secured boiler" means a boiler that has been:
250 1. Physically disconnected from the system, including
251 disconnection from fuel, water, steam, electricity, and stack;
252 or

253 2. Locked out and tagged out in accordance with the
254 Occupational Safety and Health Administration's standard
255 relating to the control of hazardous energy and lockout or
256 tagout in 29 C.F.R. s. 1910.147, as adopted by rule of the
257 department.

258 ~~(9)~~~~(2)~~ "Public assembly locations" includes include
259 schools, day care centers, community centers, churches,



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260 theaters, hospitals, nursing and convalescent homes, stadiums,
261 amusement parks, and other locations open to the general public.

262 ~~(5)~~~~(3)~~ "Certificate inspection" means an inspection whose
263 the report of which is used by the chief boiler inspector to
264 determine whether or not a certificate of operation may be
265 issued.

266 ~~(7)~~~~(4)~~ "Certificate of operation compliance" means a
267 document issued to the owner of a boiler which authorizes the
268 owner to operate the boiler, subject to any restrictions
269 endorsed thereon.

270 ~~(6)~~~~(5)~~ "Certificate of competency" means a document issued
271 to a person who has satisfied the minimum competency
272 requirements for boiler inspectors under this chapter ~~ss-~~
273 ~~554.1011-554.115.~~

274 ~~(8)~~~~(6)~~ "Department" means the Department of Financial
275 Services.

276 ~~(1)~~~~(7)~~ "A.S.M.E." means the American Society of Mechanical
277 Engineers.

278 (2) "Authorized inspection agency" means:

279 (a) Any county, municipality, town, or other governmental
280 subdivision that has adopted into law the Boiler and Pressure
281 Vessel Code of the A.S.M.E. and the National Board Inspection
282 Code for the construction, installation, inspection,
283 maintenance, and repair of boilers to regulate boilers in public
284 assembly locations, and whose boiler inspectors hold valid
285 certificates of competency in accordance with s. 554.104;

286 (b) An insurer authorized by a subsisting certificate of
287 authority, issued by the Office of Insurance Regulation, to
288 transact boiler and machinery insurance in this state, and whose



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289 boiler inspectors hold valid certificates of competency in
290 accordance with s. 554.104; or

291 (c) An inspecting agency accredited in accordance with The
292 National Board of Boiler and Pressure Vessel Inspector's program
293 entitled "Accreditation of Authorized Inspection Agencies (AIA)
294 Performing Inservice or Repair/Alteration Inspection
295 Activities," document number NB-369, and whose boiler inspectors
296 hold valid certificates of competency in accordance with s.
297 554.104. The department shall by rule require an inspection
298 agency authorized pursuant to this paragraph to maintain
299 financial security adequate to indemnify the owner of the boiler
300 if such agency's negligence or failure to inspect an uninsured
301 boiler results in a loss. Such inspection agency may inspect
302 uninsured boilers or, at the direction of an insurance company,
303 may inspect a boiler insured by that insurance company.

304 (4) "Boiler insurance company" means a company authorized
305 by a subsisting certificate of authority, issued by the Office
306 of Insurance Regulation, to transact boiler and machinery
307 insurance in this state.

308 Section 4. Section 554.103, Florida Statutes, is amended to
309 read:

310 554.103 Boiler code.—The department shall adopt by rule a
311 State Boiler Code for the safe construction, installation,
312 inspection, maintenance, and repair of boilers in this state.
313 The rules adopted shall be based upon and shall at all times
314 follow generally accepted nationwide engineering standards,
315 formulas, and practices pertaining to boiler construction and
316 safety.

317 (1) The department shall adopt an existing code for new



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318 construction and installation known as the Boiler and Pressure
319 Vessel Code of the American Society of Mechanical Engineers,
320 including all amendments and interpretations ~~approved thereto by~~
321 ~~the Council on Codes and Standards of A.S.M.E. The department~~
322 ~~may adopt amendments and interpretations~~ to the A.S.M.E. Boiler
323 and Pressure Vessel Code approved by the A.S.M.E. Council on
324 Codes and Standards subsequent to the adoption of the State
325 Boiler Code, and when so adopted by the department, such
326 amendments and interpretations ~~shall~~ become a part of the State
327 Boiler Code.

328 (2) The installer owner of any boiler placed in use in this
329 state after January 1, 2018, must, before installing the boiler,
330 apply on a form adopted by rule of the department for a permit
331 to install the boiler from the chief boiler inspector. The
332 application must include the boiler's A.S.M.E. manufacturer's
333 data report and other documents required by the State Boiler
334 Code before the boiler is placed in service. The installer must
335 contact the chief boiler inspector to schedule an inspection for
336 each boiler no later than 7 days before the boiler is placed in
337 service after October 1, 1987, shall submit the A.S.M.E.
338 manufacturer's data report on such boiler to the chief inspector
339 not more than 90 days following the inservice date of the
340 boiler.

341 (3) The maximum allowable working pressure of a boiler
342 carrying the A.S.M.E. code symbol must ~~shall~~ be determined by
343 the applicable sections of the code under which it was
344 constructed and stamped. Subject to the concurrence of the chief
345 boiler inspector, such boiler may be rerated in accordance with
346 the standards of the State Boiler Code.



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347 (4) The maximum allowable working pressure of a boiler that
348 ~~which~~ does not carry the A.S.M.E. code symbol must shall be
349 computed in accordance with the standards of the State Boiler
350 Code.

351 (5) ~~This chapter may not Nothing in ss. 554.1011-554.115~~
352 ~~shall~~ be construed to in any way prevent the use, sale, or
353 reinstallation of a boiler if such boiler has been made to
354 conform to the applicable provisions of the State Boiler Code
355 governing existing installations and if, upon inspection, the
356 boiler has been found to be in a safe condition.

357 (6) The department, at its discretion, may authorize the
358 construction, installation, and operation of boilers of special
359 design or construction which do not meet the specific
360 requirements of the State Boiler Code, but which are consistent
361 with the intent of the safety objectives of the code.

362 (7) The department may adopt rules pursuant to ss.
363 120.536(1) and 120.54 to administer this chapter. Such rules may
364 include specifying the procedures and forms to be used to obtain
365 an installation permit, an initial certificate, or a renewal
366 certificate, and the submission of reports and notices required
367 under this chapter.

368 Section 5. Section 554.104, Florida Statutes, is amended to
369 read:

370 554.104 Certification of boiler inspectors required;
371 application; qualifications; renewal Boilers of special design.-
372 The department, at its discretion, may authorize the
373 construction, installation, and operation of boilers of special
374 design or construction that do not meet the specific
375 requirements of the State Boiler Code but are not inconsistent



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376 ~~with the intent of the safety objectives of such code.~~

377 (1) CERTIFICATE REQUIRED.-A person may not be, act as, or
378 advertise or hold himself or herself out to be an inspector of a
379 boiler that is subject to regulation by this chapter, unless he
380 or she currently holds a certificate of competency issued by the
381 department.

382 (2) APPLICATION.-A person who desires to be certified to
383 inspect boilers that are subject to regulation by this chapter
384 must apply in writing to the department to take the
385 certification examination.

386 (3) QUALIFICATIONS.-A person is qualified to take the
387 certification examination if the person:

388 (a) Has submitted the application for examination together
389 with the fee required under s. 554.111(1)(a);

390 (b) Is at least 18 years of age;

391 (c) Has completed the 2-hour training course under
392 subsection (4) on the requirements of this chapter and any
393 related rules adopted by the department. The course must be
394 completed no later than 12 months before issuance of an initial
395 or renewal certificate; and

396 (d) Has:

397 1. At least 3 years of experience in the construction,
398 installation, inspection, operation, maintenance, or repair of
399 high pressure, high temperature water boilers; or

400 2. Met the requirements to qualify as a commissioned
401 inspector by the National Board of Boiler and Pressure Vessel
402 Inspectors as set forth in NB-263, RCI-1, Rules for Commissioned
403 Inspectors, as adopted by rule of the department.

404 (4) TRAINING COURSE.-The department shall adopt by rule a



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405 2-hour training course on the requirements of this chapter and
406 any related rules adopted by the department. The department
407 shall make the training course available online and may make the
408 course available in a classroom setting. A boiler insurance
409 company may include the department's course as part of its in-
410 house training of a boiler inspector student, in lieu of the
411 student taking the online training course. A boiler insurance
412 company that includes the department's course in its in-house
413 training of a boiler inspector student must indicate that the
414 student completed the training on an application filed with the
415 department for certification of competency.

416 (5) EXAMINATION.—A person applying for a certificate of
417 competency must have successfully passed the examination
418 administered by the National Board of Boiler and Pressure Vessel
419 Inspectors and be eligible to obtain a National Board
420 commission.

421 (6) ISSUANCE OF CERTIFICATE.—The chief boiler inspector
422 must issue a certificate of competency to each person who is
423 qualified under this section and who holds a commission from the
424 National Board of Boiler and Pressure Vessel Inspectors.

425 (7) RENEWAL OF CERTIFICATE.—A certificate of competency
426 expires on December 31 of each year and may be renewed upon the
427 filing of a renewal application with the department. A secured
428 electronic application must be used, if available on the
429 department's website.

430 (8) RULES.—The department may adopt rules necessary to
431 administer this section.

432 Section 6. Section 554.105, Florida Statutes, is amended to
433 read:



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434 554.105 Chief boiler inspector.—

435 (1) The Chief Financial Officer shall appoint a chief
436 boiler inspector, who must have at least ~~shall have not less~~
437 ~~than~~ 5 years' experience in the construction, installation,
438 inspection, operation, maintenance, or repair of high pressure,
439 high temperature water boilers and who must ~~shall~~ hold a
440 commission from the National Board of Boiler and Pressure Vessel
441 Inspectors or a certificate of competency from the department.

442 (2) The department, through the chief boiler inspector,
443 shall administer the state boiler inspection program, and shall:

444 (a) Take all action necessary to enforce the State Boiler
445 Code and the rules adopted pursuant to this chapter ~~ss.~~
446 ~~554.1011-554.115.~~

447 (b) Keep a complete record on all boilers at public
448 assembly locations. Such record must ~~shall~~ include the name of
449 each boiler owner or user and the location, type, ~~dimensions,~~
450 maximum allowable working pressure, age, ~~and~~ last recorded
451 inspection of each boiler, and any other information necessary
452 to expedite the certification process.

453 ~~(c) Publish and make available to anyone, upon request,~~
454 ~~copies of the rules adopted pursuant to ss. 554.1011-554.115.~~

455 ~~(d)~~ Expend funds necessary to meet the expenses authorized
456 by this chapter ~~ss. 554.1011-554.115~~, including the necessary
457 travel expenses of the chief boiler inspector and deputy boiler
458 inspectors, and the expenses incident to the maintenance of this
459 ~~his or her~~ office.

460 Section 7. Section 554.106, Florida Statutes, is amended to
461 read:

462 554.106 Deputy boiler inspectors.—



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463 (1) The department shall employ deputy boiler inspectors
464 who shall be responsible to the chief boiler inspector and who
465 shall each hold a certificate of competency from the department.

466 (2) A deputy boiler inspector shall perform inspections of
467 uninsured boilers that are subject to regulation under this
468 chapter, in accordance with the inspection frequency set forth
469 in s. 554.108. A deputy boiler inspector may also engage in
470 public outreach activities of the department and conduct other
471 duties as assigned by the chief boiler inspector.

472 Section 8. Section 554.107, Florida Statutes, is amended to
473 read:

474 554.107 Special boiler inspectors.-

475 (1) Upon application by any authorized inspection agency
476 company licensed to insure boilers in this state, the chief
477 boiler inspector shall issue a certificate of competency as a
478 special boiler inspector to any inspector employed by the
479 authorized inspection agency company, if provided that such
480 boiler inspector satisfies the competency requirements for
481 inspectors as provided in s. 554.104 s. 554.113. Special boiler
482 inspectors shall perform inspections of insured boilers in
483 accordance with the inspection frequency set forth in s.
484 554.108.

485 (2) The certificate of competency of a special boiler
486 inspector remains shall remain in effect only so long as the
487 special boiler inspector is employed by an authorized inspection
488 agency a company licensed to insure boilers in this state. Upon
489 termination of employment with such company, such company a
490 special inspector shall, in writing, notify the chief boiler
491 inspector of such special boiler inspector's termination. Such



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492 notice ~~must shall~~ be given within 15 days following the date of
493 termination.

494 Section 9. Subsections (1), (2), (4), and (5) of section
495 554.108, Florida Statutes, are amended, and subsection (6) is
496 added to that section, to read:

497 554.108 Inspection.-

498 (1) The inspection requirements of this chapter apply only
499 to boilers located in public assembly locations. A potable hot
500 water supply boiler with a heat input of 200,000 British thermal
501 units (Btu) per hour and above, up to a heat input not exceeding
502 400,000 Btu per hour, is exempt from inspection, but must be
503 stamped with the A.S.M.E. code symbol "HLW" and the boiler's
504 A.S.M.E data report must be filed as required under s.
505 554.103(2) The only boilers required to be inspected under the
506 provisions of ss. 554.1011-554.115 are boilers located in public
507 assembly locations.

508 (2) Each inspection of a boiler conducted pursuant to this
509 chapter ~~must ss. 554.1011-554.115 shall~~ be made by the chief
510 boiler inspector, a deputy boiler inspector, or a special boiler
511 inspector. An owner, or the owner's designee, shall perform all
512 operation, testing, manipulation of boiler controls and safety
513 devices, removal of lagging, and disassembly of boiler
514 components to allow the chief boiler inspector, deputy boiler
515 inspector, or special boiler inspector to conduct inspections as
516 required by this section.

517 (4) Each boiler subject to inspection must be inspected
518 within 30 days after expiration of the boiler's certificate of
519 operation. However, an inspection report must be received by the
520 chief boiler inspector no later than 30 days after the projected



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521 expiration date of the certificate of operation. If, upon
522 inspection, the chief boiler inspector, deputy boiler inspector,
523 or special boiler inspector finds that a boiler is in violation
524 of any provision of the State Boiler Code, the inspector must
525 promptly notify the owner or user and state what repairs or
526 other corrective measures are needed. Deputy boiler inspectors
527 and special boiler inspectors shall file a written report, on a
528 form adopted by rule of the department, on each certificate
529 inspection with the chief boiler inspector within 15 days after
530 the following such inspection. A certificate inspection report
531 must list all violations of the State Boiler Code and any
532 conditions that may adversely affect the operation of the
533 boiler. The filing of reports of inspections, other than
534 statutorily required certificate inspections, is are not
535 required unless such inspections disclose that a boiler is in an
536 unsafe condition or unless the boiler has failed and requires
537 major repair or replacement. The inspection report must list the
538 extent of damage to the boiler, as well as the cause of the
539 failure, if known, and any other pertinent information. However,
540 an inspection report must be filed for any inspection performed
541 on a boiler with a previously identified code violation. The
542 report must indicate whether the violation has been corrected.
543 The agency responsible for conducting the inspection must
544 perform followup inspections, not more than every 6 months, of a
545 previously identified code violation until it is corrected.

546 (5) Upon a determination by the chief boiler inspector
547 determining that a boiler cannot be safely operated, is in an
548 unsafe condition and poses an imminent danger to the public
549 health, safety, and welfare, the chief inspector, a deputy



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550 ~~inspector, or a special inspector may immediately order the~~
551 ~~boiler must immediately to be shut down. The chief boiler~~
552 ~~inspector or a deputy boiler inspector shall attach a tag to the~~
553 ~~boiler indicating that the boiler has been shut down due to an~~
554 ~~unsafe condition. The boiler must shall remain shut down until a~~
555 ~~reinspection by the chief boiler inspector or a deputy boiler a~~
556 ~~certified inspector determines that all violations have been~~
557 ~~corrected, that the boiler may be operated safely, and that a~~
558 ~~certificate of compliance has been issued. A boiler that may not~~
559 ~~be safely operated, as determined by the chief boiler inspector,~~
560 ~~is deemed to constitute an imminent danger to the public health,~~
561 ~~safety, and welfare.~~

562 (6) The department may adopt rules necessary to administer
563 this section.

564 Section 10. Section 554.1081, Florida Statutes, is created
565 to read:

566 554.1081 Boiler inspections by insurance companies and
567 local governmental agencies.-

568 (1) An insurance company insuring a boiler located in a
569 public assembly location in this state shall inspect, or shall
570 contract with an authorized inspection agency to inspect, the
571 insured boiler. A boiler insurance company shall annually report
572 to the department the name of any authorized inspection agency
573 performing any required boiler inspections on its behalf and
574 shall actively monitor insured boilers to ensure that
575 inspections are conducted as required by this chapter.

576 (2) A county, municipality, town, or other governmental
577 subdivision that has adopted into law the Boiler and Pressure
578 Vessel Code of the A.S.M.E. and the National Board Inspection



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579 Code for the construction, installation, inspection,
580 maintenance, and repair of boilers to regulate boilers in public
581 assembly locations may inspect such boilers. All boiler
582 inspections must be conducted by special boiler inspectors in
583 accordance with this chapter.

584 Section 11. Section 554.109, Florida Statutes, is amended
585 to read:

586 554.109 Exemptions.—

587 ~~(1) Any insurance company insuring a boiler located in a~~
588 ~~public assembly location in this state shall inspect such boiler~~
589 ~~so insured, and any county, city, town, or other governmental~~
590 ~~subdivision which has adopted into law the Boiler and Pressure~~
591 ~~Vessel Code of the American Society of Mechanical Engineers and~~
592 ~~the National Board Inspection Code for the construction,~~
593 ~~installation, inspection, maintenance, and repair of boilers,~~
594 ~~regulating such boilers in public assembly locations, shall~~
595 ~~inspect such boilers so regulated; provided that such inspection~~
596 ~~shall be conducted by a special inspector licensed pursuant to~~
597 ~~ss. 554.1011-554.115. Upon filing of a report of satisfactory~~
598 ~~inspection with the department, such boiler is exempt from~~
599 ~~inspection by the department.~~

600 ~~(2) The provisions of This chapter does shall not apply to~~
601 ~~potable hot water supply boilers or lined storage water heaters~~
602 ~~that which are directly fired with oil, gas, electricity, or~~
603 ~~solar energy, provided that none of the following limitations is~~
604 ~~are exceeded:~~

605 ~~(1)(a)~~ Heat input of 400,000 Btu per hour.

606 ~~(2)(b)~~ Water temperature of 210 degrees Fahrenheit.

607 ~~(3)(c)~~ Nominal water-containing capacity of 120 gallons.



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608 ~~These exempt hot water supply boilers and lined storage water~~
609 ~~heaters shall be equipped with safety relief valves conforming~~
610 ~~to the requirements of the Boiler and Pressure Vessel Code of~~
611 ~~the American Society of Mechanical Engineers and of the National~~
612 ~~Board Inspection Code.~~

613 Section 12. Section 554.1101, Florida Statutes, is amended
614 to read:

615 554.1101 Certificate of operation compliance.—

616 (1) If an inspection report filed pursuant to s. 554.108
617 shows a boiler to be in compliance with all applicable
618 provisions of the State Boiler Code, the chief boiler inspector
619 must shall, upon receipt of the inspection fee, issue a
620 certificate of operation compliance to the owner. Such
621 certificate must shall bear the date of the inspection and
622 specify the maximum pressure at which the boiler may be
623 operated.

624 (2) The certificate for a power boiler or a high pressure,
625 high temperature water boiler is valid for a period of 12 months
626 from the date of the certificate inspection. The certificate for
627 a heating boiler or a hot water supply boiler is valid for a
628 period of 24 months from the date of the certificate inspection.
629 The certificate must shall be posted under glass, or be
630 similarly protected, in the room containing the boiler.

631 (3) A boiler insurance company shall notify the chief
632 boiler inspector within 30 days after the issuance of a new or
633 renewal boiler and machinery insurance policy, or the
634 cancellation or nonrenewal of a boiler and machinery insurance
635 policy, covering places of public assembly in this state.
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637 (4) If the chief boiler inspector has knowledge that a
638 boiler regulated under this chapter was covered by a boiler and
639 machinery insurance policy after its most recent certification
640 inspection, the certificateholder must, upon the request of the
641 chief boiler inspector, submit its certificate of boiler and
642 machinery insurance for the boiler if the department has not
643 received the special boiler inspector's annual inspection report
644 within 30 days after its due date.

645 Section 13. Section 554.111, Florida Statutes, is amended
646 to read:

647 554.111 Fees.—

648 (1) The department shall charge the following fees:

649 (a) For an applicant for a certificate of competency, the
650 initial application fee shall be \$50, and the annual renewal fee
651 shall be \$30. The fee for examination shall be \$50.

652 (b) For certificate inspections conducted by the
653 department:

- 654 1. For power boilers and high pressure, high temperature
- 655 water boilers of:
- 656 4,000 square feet or less heating surface.....\$60
- 657 More than 4,000 square feet heating surface and less than 10,000
- 658 square feet of heating surface.....\$70
- 659 10,000 square feet or more heating surface.....\$90

- 660 2. For heating boilers:
- 661 Without a manhole.....\$40
- 662 With a manhole.....\$70

663 3. For hot water supply boilers.....\$40

664 (c) For issuance of a ~~compliance~~ certificate of operation
665 without a department inspection.....\$30



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666 (d) Duplicate certificates or address
667 changes.....\$5

668 (e) An application for a boiler permit must include the
669 applicable certificate inspection fee provided in paragraph (b).

670 (2) Not more than an amount equal to one certificate
671 inspection fee ~~may shall~~ be charged or collected for any and all
672 boiler inspections in any inspection period, except as otherwise
673 provided in this chapter ~~ss. 554.1011-554.115~~.

674 (a) When it is necessary to make a special trip to observe
675 the application of a hydrostatic test, an additional fee equal
676 to the fee for a certificate inspection of the boiler must shall
677 be charged.

678 (b) All other inspections, including shop inspections,
679 surveys, and inspections of secondhand boilers made by the chief
680 boiler inspector or a deputy boiler inspector, must shall be
681 charged at the rate of not less than \$270 for one-half day of 4
682 hours, and \$500 for 1 full day of 8 hours, plus travel, hotel,
683 and incidental expenses in accordance with chapter 112.

684 (3) The chief boiler inspector shall deposit all fees or
685 finer received pursuant to this chapter ~~ss. 554.1011-554.115~~
686 into the Insurance Regulatory Trust Fund.

687 Section 14. Sections 554.112 and 554.113, Florida Statutes,
688 are repealed.

689 Section 15. Section 554.114, Florida Statutes, is amended
690 to read:

691 554.114 Prohibitions; penalties.—

692 (1) A person may not:

693 (a) Operate a boiler at a public assembly location without
694 a valid certificate of operation ~~compliance~~ for that boiler;



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695 (b) ~~Give false or forged information to the department or~~
696 ~~an inspector for the purpose of obtaining a certificate of~~
697 ~~compliance;~~

698 ~~(e)~~ Use a certificate of operation compliance for any
699 boiler other than for the boiler for which it was issued;

700 ~~(c)(d)~~ Operate a boiler for which the certificate of
701 operation compliance has been suspended, revoked, or not
702 renewed;

703 ~~(e)~~ Give false or forged information to the department for
704 the purpose of obtaining a certificate of competence; or

705 ~~(d)(f)~~ Inspect any boiler regulated under this chapter the
706 provisions of ss. 554.1011-554.115 without having a valid
707 certificate of competency.

708 (2) A boiler insurance company that fails to inspect or to
709 have inspected, in accordance with this chapter, any boiler
710 insured by the company and regulated under this chapter is
711 subject to the penalties provided in subsection (4), unless the
712 failure to inspect was the result of an owner's or operator's
713 failure to provide reasonable access to the boiler ~~Any person~~
714 ~~who violates this section is guilty of a misdemeanor of the~~
715 ~~second degree, punishable by fine as provided in s. 775.083.~~

716 (3) An authorized inspection agency that is under contract
717 with a boiler insurance company and that fails to inspect, in
718 accordance with this chapter, any boiler insured by the company
719 and regulated under this chapter is subject to the penalties
720 provided in subsection (4), unless the failure to inspect was
721 the result of an owner's or operator's failure to provide
722 reasonable access to the boiler.

723 (4) A boiler insurance company, authorized inspection



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724 agency, or other person in violation of this section for more
725 than 30 days shall pay a fine of \$10 per day for the first 10
726 days of noncompliance, \$50 per day for the subsequent 20 days of
727 noncompliance, and \$100 per day for each subsequent day over 20
728 days of noncompliance.

729 Section 16. Section 554.115, Florida Statutes, is amended
730 to read:

731 554.115 Disciplinary proceedings.—

732 (1) The department may deny, refuse to renew, suspend, or
733 revoke a certificate of operation compliance upon proof that:

734 (a) The certificate has been obtained by fraud or
735 misrepresentation;

736 (b) The boiler for which the certificate was issued cannot
737 be operated safely; ~~or~~

738 (c) The person who received the certificate willfully or
739 deliberately violated the State Boiler Code, this chapter, or
740 ~~ss. 554.1011-554.115~~ or any other rule adopted pursuant to this
741 chapter; or ss. 554.1011-554.115.

742 (d) The owner of a boiler:

743 1. Operated a boiler at a public assembly location without
744 a valid certificate of operation for that boiler;

745 2. Used a certificate of operation for a boiler other than
746 the boiler for which the certificate of operation was issued;

747 3. Gave false or forged information to the department, to
748 an authorized inspection agency, or to another boiler inspector
749 for the purpose of obtaining a certificate of operation;

750 4. Operated a boiler after the certificate of operation for
751 the boiler expired, was not renewed, or was suspended or
752 revoked;



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753 5. Operated a boiler that is in an unsafe condition; or
754 6. Operated a boiler in a manner that is contrary to the
755 requirements of this chapter or any rule adopted under this
756 chapter.
757 (2) The department may deny, refuse to renew, suspend, or
758 revoke a certificate of competency upon proof that:
759 (a) The certificate was obtained by fraud or
760 misrepresentation;
761 (b) The inspector to whom the certificate was issued is no
762 longer qualified under this chapter ss. 554.1011-554.115 to
763 inspect boilers; or
764 (c) The boiler inspector:
765 1. ~~Operated a boiler at a public assembly location without~~
766 ~~a valid certificate of compliance for that boiler;~~
767 2. ~~Gave false or forged information to the department, an~~
768 ~~authorized inspection agency, or to another boiler inspector for~~
769 ~~the purpose of obtaining a certificate of operation; or~~
770 ~~compliance;~~
771 3. ~~Used a certificate of compliance for any boiler other~~
772 ~~than the boiler for which it was issued;~~
773 4. ~~Operated a boiler for which the certificate of~~
774 ~~compliance has been suspended or revoked or has expired;~~
775 ~~2.5-~~ Inspected any boiler regulated under this chapter ss.
776 554.1011-554.115 without having obtained a valid certificate of
777 competency.
778 6. ~~Operated a boiler that is in an unsafe condition; or~~
779 7. ~~Operated a boiler in a manner that is contrary to the~~
780 ~~requirements of this chapter or any rule adopted under this~~
781 ~~chapter.~~



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782 (3) Each suspension of a certificate of operation
783 ~~compliance~~ or certificate of competency shall continue in effect
784 until all violations have been corrected and, for boiler safety
785 violations, until the boiler has been inspected by an authorized
786 inspector and shown to be in a safe working condition.
787 ~~(4) A person in violation of this section who does not have~~
788 ~~a valid certificate of competency shall be reported by the chief~~
789 ~~inspector to the appropriate state attorney.~~
790 ~~(5) A person in violation of this section who has a valid~~
791 ~~certificate of competency is subject to administrative action by~~
792 ~~the chief inspector.~~
793 ~~(4)(6)~~ A revocation of a certificate of competency is
794 permanent, and a revoked certificate of competency may not be
795 reinstated or a new certificate of competency issued to the same
796 person. A suspension of a certificate of competency continues in
797 effect until all violations have been corrected. ~~A suspension of~~
798 ~~a certificate of compliance for any boiler safety violation~~
799 ~~continues in effect until the boiler has been inspected by an~~
800 ~~authorized inspector and shown to be in safe working condition.~~
801 Section 17. Section 554.1151, Florida Statutes, is created
802 to read:
803 554.1151 Administrative fine in lieu of or in addition to
804 suspension, revocation, or refusal to renew a certificate of
805 operation or competency.
806 (1) If the department finds that one or more grounds exist
807 for the suspension, revocation, or refusal to renew any
808 certificate of operation or certificate of competency issued
809 under this chapter, the department may, in its discretion, in
810 lieu of or in addition to suspension or revocation or in lieu of



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811 refusal to renew, impose upon the certificateholder an
812 administrative penalty in an amount up to \$500, or, if the
813 department has found willful misconduct or willful violation on
814 the part of the certificateholder, in an amount up to \$3,500.

815 (2) The department may allow the certificateholder a
816 reasonable period, no more than 30 days, within which to pay to
817 the department the amount of the penalty so imposed. If the
818 certificateholder fails to pay the penalty in its entirety to
819 the department within the period so allowed, the certificate of
820 that person must be suspended until the penalty is paid. If the
821 certificateholder fails to pay the penalty in its entirety to
822 the department within 90 days after the period so allowed, the
823 certificate of that person must be revoked.

824 Section 18. Subsection (7) of section 624.307, Florida
825 Statutes, is amended to read:

826 624.307 General powers; duties.—

827 (7) The department and office, within existing resources,
828 may expend funds for the professional development of its
829 employees, including, but not limited to, professional dues for
830 employees who are required to be members of professional
831 organizations; examinations leading to professional designations
832 required for employment with the office; training courses and
833 examinations provided through, and to ensure compliance with,
834 the National Association of Insurance Commissioners; or other
835 training courses related to the regulation of insurance.

836 Section 19. Present subsections (1), (2), and (3) and (4)
837 through (19) of section 626.015, Florida Statutes, are
838 redesignated as subsections (2), (3), and (4) and (6) through
839 (21), respectively, present subsection (8) is amended, and new



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840 subsections (1) and (5) are added to that section, to read:

841 626.015 Definitions.—As used in this part:

842 (1) "Active participant" means a member in good standing of
843 an association who attends 4 or more hours of association
844 meetings every year, not including any department-approved
845 continuing education course.

846 (5) "Association" includes the Florida Association of
847 Insurance Agents (FAIA), the National Association of Insurance
848 and Financial Advisors (NAIFA), the Florida Association of
849 Health Underwriters (FAHU), the Latin American Association of
850 Insurance Agencies (LAAIA), the Florida Association of Public
851 Insurance Adjusters (FAPIA), the Florida Bail Agents Association
852 (FBAA), or the Professional Bail Agents of the United States
853 (PBUS).

854 (10) ~~(8)~~ "Insurance agency" means a business location at
855 which an individual, firm, partnership, corporation,
856 association, or other entity, other than an employee of the
857 individual, firm, partnership, corporation, association, or
858 other entity and other than an insurer as defined by s. 624.03
859 or an adjuster as defined by subsection (2) ~~(1)~~, engages in any
860 activity or employs individuals to engage in any activity which
861 by law may be performed only by a licensed insurance agent.

862 Section 20. Section 626.207, Florida Statutes, is amended
863 to read:

864 626.207 Disqualification of applicants and licensees;
865 penalties against licensees; rulemaking authority.—

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

867 (a) "Applicant" means an individual applying for licensure
868 or relicensure under this chapter, and an officer, director,



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869 majority owner, partner, manager, or other person who manages or
870 controls an entity applying for licensure or relicensure under
871 this chapter.

872 (c) "Financial services business" means any financial
873 activity regulated by the Department of Financial Services, the
874 Office of Insurance Regulation, or the Office of Financial
875 Regulation.

876 (b)(2) ~~For purposes of this section, the terms "Felony of~~
877 ~~the first degree" and "capital felony" include all felonies~~
878 ~~designated as such by the Florida Statutes, as well as any~~
879 ~~felony so designated in the jurisdiction in which the plea is~~
880 ~~entered or judgment is rendered.~~

881 (2)(3) An applicant who has been found guilty of or has
882 pleaded guilty or nolo contendere to any of the following
883 crimes, regardless of adjudication, is permanently barred from
884 licensure under this chapter: ~~commits~~

885 (a) A felony of the first degree;

886 (b) A capital felony;

887 (c) A felony involving money laundering, ~~fraud, or~~

888 (d) A felony embezzlement; or

889 (e) A felony directly related to the financial services
890 ~~business is permanently barred from applying for a license under~~
891 ~~this part. This bar applies to convictions, guilty pleas, or~~
892 ~~nolo contendere pleas, regardless of adjudication, by any~~
893 ~~applicant, officer, director, majority owner, partner, manager,~~
894 ~~or other person who manages or controls any applicant.~~

895 (3)(4) An applicant who has been found guilty of or has
896 pleaded guilty or nolo contendere to a crime ~~For all other~~
897 ~~crimes not included in subsection (2), regardless of~~



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898 ~~adjudication, is subject to (3), the department shall adopt~~
899 ~~rules establishing the process and application of disqualifying~~
900 ~~periods that include:~~

901 (a) A 15-year disqualifying period for all felonies
902 involving moral turpitude which ~~that~~ are not specifically
903 included in the permanent bar contained in subsection (2) ~~(3)~~.

904 (b) A 7-year disqualifying period for all felonies to which
905 neither the permanent bar in subsection (2) ~~(3)~~ nor the 15-year
906 disqualifying period in paragraph (a) applies.

907 (c) A 7-year disqualifying period for all misdemeanors
908 directly related to the financial services business.

909 (4)(5) The department shall adopt rules to administer this
910 section. The rules must provide ~~providing~~ for additional
911 disqualifying periods due to the commitment of multiple crimes
912 and may include other factors reasonably related to the
913 applicant's criminal history. The rules shall provide for
914 mitigating and aggravating factors. However, mitigation may not
915 result in a period of disqualification of less than 7 years and
916 may not mitigate the disqualifying periods in paragraphs (3) (b)
917 and (c) ~~(4) (b) and (e)~~.

918 (5)(6) For purposes of this section, the disqualifying
919 periods begin upon the applicant's final release from
920 supervision or upon completion of the applicant's criminal
921 sentence, ~~including payment of fines, restitution, and court~~
922 ~~costs for the crime for which the disqualifying period applies.~~
923 The department may not issue a license to an applicant unless
924 all related fines, court costs and fees, and court-ordered
925 restitution have been paid.

926 (6)(7) After the disqualifying period has expired ~~been met,~~



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927 the burden is on the applicant to demonstrate that the applicant
928 has been rehabilitated, does not pose a risk to the insurance-
929 buying public, is fit and trustworthy to engage in the business
930 of insurance pursuant to s. 626.611(1)(g), and is otherwise
931 qualified for licensure.

932 (7) Notwithstanding subsections (2) and (3), upon a grant
933 of a pardon or the restoration of civil rights pursuant to
934 chapter 940 and s. 8, Art. IV of the State Constitution with
935 respect to a finding of guilt or a plea under subsection (2) or
936 subsection (3), such finding or plea no longer bars or
937 disqualifies the applicant from licensure under this chapter
938 unless the clemency specifically excludes licensure in the
939 financial services business; however, a pardon or restoration of
940 civil rights does not require the department to award such
941 license.

942 (8) The department shall adopt rules establishing specific
943 penalties against licensees in accordance with ss. 626.641 and
944 626.651 for violations of s. 626.611, s. 626.621, s. 626.8437,
945 s. 626.844, s. 626.935, s. 634.181, s. 634.191, s. 634.320, s.
946 634.321, s. 634.422, s. 634.423, s. 642.041, or s. 642.043. The
947 purpose of the revocation or suspension is to provide a
948 sufficient penalty to deter future violations of the Florida
949 Insurance Code. The imposition of a revocation or the length of
950 suspension shall be based on the type of conduct and the
951 probability that the propensity to commit further illegal
952 conduct has been overcome at the time of eligibility for
953 relicensure. The length of suspension may be adjusted based on
954 aggravating or mitigating factors, established by rule and
955 consistent with this purpose.



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956 (9) Section 112.011 does not apply to any applicants for
957 licensure under the Florida Insurance Code, including, but not
958 limited to, agents, agencies, adjusters, adjusting firms,
959 customer representatives, or managing general agents.

960 Section 21. Paragraph (j) of subsection (2) of section
961 626.221, Florida Statutes, is amended to read:

962 626.221 Examination requirement; exemptions.-

963 (2) However, an examination is not necessary for any of the
964 following:

965 (j) An applicant for license as an all-lines adjuster who
966 has the designation of Accredited Claims Adjuster (ACA) from a
967 regionally accredited postsecondary institution in this state,
968 Associate in Claims (AIC) from the Insurance Institute of
969 America, Professional Claims Adjuster (PCA) from the
970 Professional Career Institute, Professional Property Insurance
971 Adjuster (PPIA) from the HurriClaim Training Academy, Certified
972 Adjuster (CA) from ALL LINES Training, ~~or~~ Certified Claims
973 Adjuster (CCA) from AE21 Incorporated, or Universal Claims
974 Certification (UCC) from Claims and Litigation Management
975 Alliance (CLM) whose curriculum has been approved by the
976 department and which includes comprehensive analysis of basic
977 property and casualty lines of insurance and testing at least
978 equal to that of standard department testing for the all-lines
979 adjuster license. The department shall adopt rules establishing
980 standards for the approval of curriculum.

981 Section 22. Present paragraphs (i) and (j) of subsection
982 (7) of section 626.2815, Florida Statutes, are redesignated as
983 paragraphs (j) and (k), respectively, and a new paragraph (i) is
984 added to that subsection, to read:



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985 626.2815 Continuing education requirements.-
986 (7) The following courses may be completed in order to meet
987 the elective continuing education course requirements:

988 (i) Any part of the Claims and Litigation Management
989 Alliance (CLM) Universal Claims Certification (UCC) professional
990 designation: 19 hours of elective continuing education and 5
991 hours of the continuing education required under subsection (3).

992 Section 23. Paragraph (b) of subsection (1) of section
993 626.8734, Florida Statutes, is amended to read:

994 626.8734 Nonresident all-lines adjuster license
995 qualifications.-

996 (1) The department shall issue a license to an applicant
997 for a nonresident all-lines adjuster license upon determining
998 that the applicant has paid the applicable license fees required
999 under s. 624.501 and:

1000 (b) Has passed to the satisfaction of the department a
1001 written Florida all-lines adjuster examination of the scope
1002 prescribed in s. 626.241(6); however, the requirement for the
1003 examination does not apply to:

1004 1. An applicant who is licensed as an all-lines adjuster in
1005 his or her home state if that state has entered into a
1006 reciprocal agreement with the department; ~~or~~

1007 2. An applicant who is licensed as a nonresident all-lines
1008 adjuster in a state other than his or her home state and a
1009 reciprocal agreement with the appropriate official of the state
1010 of licensure has been entered into with the department; or

1011 3. An applicant who holds a certification set forth in s.
1012 626.221(2)(j).

1013 Section 24. Section 626.9954, Florida Statutes, is amended



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1014 to read:

1015 626.9954 Disqualification from registration.-

1016 (1) As used in this section, the terms "felony of the first
1017 degree" and "capital felony" include all felonies so designated
1018 by the laws of this state, as well as any felony so designated
1019 in the jurisdiction in which the plea is entered or judgment is
1020 rendered.

1021 (2) An applicant who has been found guilty of or has
1022 pleaded guilty or nolo contendere to the following crimes,
1023 regardless of adjudication, is permanently disqualified from
1024 registration under this part: ~~commits~~

1025 (a) A felony of the first degree;

1026 (b) A capital felony;

1027 (c) A felony involving money laundering; ~~fraud, or~~

1028 (d) A felony embezzlement; or

1029 (e) A felony directly related to the financial services
1030 business ~~is permanently barred from applying for registration~~
1031 under this part. This bar applies to convictions, guilty pleas,
1032 or nolo contendere pleas, regardless of adjudication, by an
1033 applicant.

1034 (3) An applicant who has been found guilty of or has
1035 pleaded guilty or nolo contendere to a crime ~~For all other~~
1036 crimes not described in subsection (2), regardless of
1037 adjudication, is subject to the department may adopt rules
1038 establishing the process and application of disqualifying
1039 periods including:

1040 (a) A 15-year disqualifying period for all felonies
1041 involving moral turpitude which are not specifically included in
1042 subsection (2).



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1043 (b) A 7-year disqualifying period for all felonies not
1044 specifically included in subsection (2) or paragraph (a).
1045 (c) A 7-year disqualifying period for all misdemeanors
1046 directly related to the financial services business.
1047 (4) The department may adopt rules to administer this
1048 section. The rules must provide for ~~providing~~ additional
1049 disqualifying periods due to the commitment of multiple crimes
1050 and may include other factors reasonably related to the
1051 applicant's criminal history. The rules must provide for
1052 mitigating and aggravating factors. However, mitigation may not
1053 result in a disqualifying period of less than 7 years and may
1054 not mitigate the disqualifying periods in paragraph (3) (b) or
1055 paragraph (3) (c).
1056 (5) For purposes of this section, the disqualifying periods
1057 begin upon the applicant's final release from supervision or
1058 upon completion of the applicant's criminal sentence, ~~including~~
1059 ~~the payment of fines, restitution, and court costs for the crime~~
1060 ~~for which the disqualifying period applies. The department may~~
1061 not issue a registration to an applicant unless all related
1062 fines, court costs and fees, and court-ordered restitution have
1063 been paid.
1064 (6) After the disqualifying period has expired ~~been met~~,
1065 the burden is on the applicant to demonstrate to the
1066 satisfaction of the department that he or she has been
1067 rehabilitated and does not pose a risk to the insurance-buying
1068 public and is otherwise qualified for registration.
1069 (7) Notwithstanding subsections (2) and (3), upon a grant
1070 of a pardon or the restoration of civil rights pursuant to
1071 chapter 940 and s. 8, Art. IV of the State Constitution with



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1072 respect to a finding of guilt or a plea under subsection (2) or
1073 subsection (3), such finding or plea no longer bars or
1074 disqualifies the applicant from applying for registration under
1075 this part unless the clemency specifically excludes licensure or
1076 specifically excludes registration in the financial services
1077 business; however, a pardon or restoration of civil rights does
1078 not require the department to award such registration.
1079 ~~(8)(7)~~ Section 112.011 does not apply to an applicant for
1080 registration as a navigator.
1081 Section 25. Paragraph (a) of subsection (3) of section
1082 626.2815, Florida Statutes, is amended, and paragraph (j) is
1083 added to that subsection, to read:
1084 626.2815 Continuing education requirements.-
1085 (3) Each licensee except a title insurance agent must
1086 complete a 5-hour update course every 2 years which is specific
1087 to the license held by the licensee. The course must be
1088 developed and offered by providers and approved by the
1089 department. The content of the course must address all lines of
1090 insurance for which examination and licensure are required and
1091 include the following subject areas: insurance law updates,
1092 ethics for insurance professionals, disciplinary trends and case
1093 studies, industry trends, premium discounts, determining
1094 suitability of products and services, and other similar
1095 insurance-related topics the department determines are relevant
1096 to legally and ethically carrying out the responsibilities of
1097 the license granted. A licensee who holds multiple insurance
1098 licenses must complete an update course that is specific to at
1099 least one of the licenses held. Except as otherwise specified,
1100 any remaining required hours of continuing education are



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1101 elective and may consist of any continuing education course
1102 approved by the department under this section.

1103 (a) Except as provided in paragraphs (b), (c), (d), (e),
1104 ~~and (i), and (j)~~, each licensee must also complete 19 hours of
1105 elective continuing education courses every 2 years.

1106 (j) For a licensee who is an active participant in an
1107 association, 2 hours of elective continuing education credit per
1108 calendar year may be approved by the department, if properly
1109 reported by the association.

1110 Section 26. Paragraph (n) of subsection (1) and subsection
1111 (2) of section 626.611, Florida Statutes, are amended to read:

1112 626.611 Grounds for compulsory refusal, suspension, or
1113 revocation of agent's, title agency's, adjuster's, customer
1114 representative's, service representative's, or managing general
1115 agent's license or appointment.—

1116 (1) The department shall deny an application for, suspend,
1117 revoke, or refuse to renew or continue the license or
1118 appointment of any applicant, agent, title agency, adjuster,
1119 customer representative, service representative, or managing
1120 general agent, and it shall suspend or revoke the eligibility to
1121 hold a license or appointment of any such person, if it finds
1122 that as to the applicant, licensee, or appointee any one or more
1123 of the following applicable grounds exist:

1124 (n) Having been found guilty of or having pleaded guilty or
1125 nolo contendere to a felony or a crime punishable by
1126 imprisonment of 1 year or more under the law of the United
1127 States of America or of any state thereof or under the law of
1128 any other country ~~which involves moral turpitude~~, without regard
1129 to whether a judgment of conviction has been entered by the



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1130 court having jurisdiction of such cases.

1131 (2) The department shall, upon receipt of information or an
1132 indictment, immediately temporarily suspend a license or
1133 appointment issued under this chapter when the licensee is
1134 charged with a felony enumerated in s. 626.207(2) ~~s. 626.207(3)~~.
1135 Such suspension shall continue if the licensee is found guilty
1136 of, or pleads guilty or nolo contendere to, the crime,
1137 regardless of whether a judgment or conviction is entered,
1138 during a pending appeal. A person may not transact insurance
1139 business after suspension of his or her license or appointment.

1140 Section 27. Subsection (8) of section 626.621, Florida
1141 Statutes, is amended, and a new subsection (15) is added to that
1142 section, to read:

1143 626.621 Grounds for discretionary refusal, suspension, or
1144 revocation of agent's, adjuster's, customer representative's,
1145 service representative's, or managing general agent's license or
1146 appointment.—The department may, in its discretion, deny an
1147 application for, suspend, revoke, or refuse to renew or continue
1148 the license or appointment of any applicant, agent, adjuster,
1149 customer representative, service representative, or managing
1150 general agent, and it may suspend or revoke the eligibility to
1151 hold a license or appointment of any such person, if it finds
1152 that as to the applicant, licensee, or appointee any one or more
1153 of the following applicable grounds exist under circumstances
1154 for which such denial, suspension, revocation, or refusal is not
1155 mandatory under s. 626.611:

1156 ~~(8) Having been found guilty of or having pleaded guilty or~~
1157 ~~nolo contendere to a felony or a crime punishable by~~
1158 ~~imprisonment of 1 year or more under the law of the United~~



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1159 ~~States of America or of any state thereof or under the law of~~
1160 ~~any other country, without regard to whether a judgment of~~
1161 ~~conviction has been entered by the court having jurisdiction of~~
1162 ~~such cases.~~

1163 (15) Denial, suspension, or revocation of, or any other
1164 adverse administrative action against, a license to practice or
1165 conduct any regulated profession, business, or vocation by this
1166 state, any other state, any nation, any possession or district
1167 of the United States, any court, or any lawful agency thereof.

1168 Section 28. Subsection (2) of section 626.7845, Florida
1169 Statutes, is amended to read:
1170 626.7845 Prohibition against unlicensed transaction of life
1171 insurance.-

1172 (2) Except as provided in s. 626.112(6), with respect to
1173 any line of authority specified in s. 626.015(12) ~~or~~
1174 ~~626.015(10)~~, an individual may not shall, unless licensed as
1175 a life agent:

1176 (a) Solicit insurance or annuities or procure applications;
1177 (b) In this state, engage or hold himself or herself out as
1178 engaging in the business of analyzing or abstracting insurance
1179 policies or of counseling or advising or giving opinions to
1180 persons relative to insurance or insurance contracts, unless the
1181 individual is other than:

1182 1. ~~As~~ A consulting actuary advising insurers ~~an insurer~~; or
1183 2. An employee ~~As to the counseling and advising of a labor~~
1184 union, association, employer, or other business entity ~~labor~~
1185 ~~unions, associations, trustees, employers, or other business~~
1186 ~~entities, or~~ the subsidiaries and affiliates of each, who
1187 counsels and advises such entity or entities relative to their



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1188 interests and those of their members or employees under
1189 insurance benefit plans; or

1190 3. A trustee advising a settlor, a beneficiary, or a person
1191 regarding his or her interests in a trust, relative to insurance
1192 benefit plans; or

1193 (c) In this state, from this state, or with a resident of
1194 this state, offer or attempt to negotiate on behalf of another
1195 person a viatical settlement contract as defined in s. 626.9911.

1196 Section 29. Section 626.8305, Florida Statutes, is amended
1197 to read:

1198 626.8305 Prohibition against the unlicensed transaction of
1199 health insurance.-Except as provided in s. 626.112(6), with
1200 respect to any line of authority specified in s. 626.015(8) ~~or~~
1201 ~~626.015(6)~~, an individual may not shall, unless licensed as a
1202 health agent:

1203 (1) Solicit insurance or procure applications; or
1204 (2) In this state, engage or hold himself or herself out as
1205 engaging in the business of analyzing or abstracting insurance
1206 policies or of counseling or advising or giving opinions to
1207 persons relative to insurance contracts, unless the individual
1208 is other than:

1209 (a) ~~As~~ A consulting actuary advising insurers; ~~or~~
1210 (b) An employee ~~As to the counseling and advising of a~~
1211 labor union, association, employer, or other business entity
1212 ~~labor unions, associations, trustees, employers, or other~~
1213 ~~business entities, or~~ the subsidiaries and affiliates of each,
1214 who counsels and advises such entity or entities relative to
1215 their interests and those of their members or employees under
1216 insurance benefit plans; ~~or~~



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1217 (c) A trustee advising a settlor, a beneficiary, or a
1218 person regarding his or her interests in a trust, relative to
1219 insurance benefit plans.

1220 Section 30. Subsection (1) of section 626.861, Florida
1221 Statutes, is amended to read:

1222 626.861 Insurer's officers, insurer's employees, reciprocal
1223 insurer's representatives; adjustments by.-

1224 (1) ~~This part may not~~ Nothing in this part shall be
1225 construed to prevent an executive officer of any insurer, or a
1226 regularly salaried employee of an insurer handling claims with
1227 respect to health insurance, a regular employee of an insurer
1228 handling claims with respect to residential property when the
1229 sublimit coverage does not exceed \$500, or the duly designated
1230 attorney or agent authorized and acting for subscribers to
1231 reciprocal insurers, from adjusting any claim loss or damage
1232 under any insurance contract of such insurer.

1233 Section 31. Paragraph (c) of subsection (5) and subsection
1234 (6) of section 626.9543, Florida Statutes, are amended to read:

1235 626.9543 Holocaust victims.-

1236 (5) PROOF OF A CLAIM.-Any insurer doing business in this
1237 state, in receipt of a claim from a Holocaust victim or from a
1238 beneficiary, descendant, or heir of a Holocaust victim, shall:

1239 (c) Permit claims irrespective of any statute of
1240 limitations or notice requirements imposed by any insurance
1241 policy issued, ~~provided the claim is submitted on or before July~~
1242 ~~1, 2018.~~

1243 (6) STATUTE OF LIMITATIONS.-Notwithstanding any law or
1244 agreement among the parties to an insurance policy to the
1245 contrary, any action brought by Holocaust victims or by a



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1246 beneficiary, heir, or a descendant of a Holocaust victim seeking
1247 proceeds of an insurance policy issued or in effect between 1920
1248 and 1945, inclusive, ~~may shall~~ not be dismissed for failure to
1249 comply with the applicable statute of limitations or laches
1250 ~~provided the action is commenced on or before July 1, 2018.~~

1251 Section 32. Section 633.516, Florida Statutes, is amended
1252 to read:

1253 633.516 Studies of Division to make study of firefighter
1254 employee occupational diseases of firefighters or persons in
1255 other fire-related fields.-The division may contract for
1256 studies, subject to the availability of funding, of shall make a
1257 continuous study of firefighter employee occupational diseases
1258 of firefighters or persons in other fire-related fields and the
1259 ways and means for the their control and prevention of such
1260 occupational diseases. When such a study or another study that
1261 is wholly or partly funded under an agreement, including a
1262 contract or grant, with the department tracks a disease of an
1263 individual firefighter or a person in another fire-related
1264 field, the division may, with associated security measures,
1265 release the confidential information, including a social
1266 security number, of that individual to a party who has entered
1267 into an agreement with the department and shall adopt rules
1268 necessary for such control and prevention. For this purpose, the
1269 division is authorized to cooperate with firefighter employers,
1270 firefighter employees, and insurers and with the Department of
1271 Health.

1272 Section 33. Paragraph (a) of subsection (6) and subsection
1273 (7) of section 768.28, Florida Statutes, are amended to read:

1274 768.28 Waiver of sovereign immunity in tort actions;



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1275 recovery limits; limitation on attorney fees; statute of
1276 limitations; exclusions; indemnification; risk management
1277 programs.-

1278 (6) (a) An action may not be instituted on a claim against
1279 the state or one of its agencies or subdivisions unless the
1280 claimant presents the claim in writing to the appropriate
1281 agency, and also, except as to any claim against a municipality,
1282 county, or the Florida Space Authority, presents such claim in
1283 writing to the Department of Financial Services, within 3 years
1284 after such claim accrues and the Department of Financial
1285 Services or the appropriate agency denies the claim in writing;
1286 except that, if:

1287 1. Such claim is for contribution pursuant to s. 768.31, it
1288 must be so presented within 6 months after the judgment against
1289 the tortfeasor seeking contribution has become final by lapse of
1290 time for appeal or after appellate review or, if there is no
1291 such judgment, within 6 months after the tortfeasor seeking
1292 contribution has either discharged the common liability by
1293 payment or agreed, while the action is pending against her or
1294 him, to discharge the common liability; or

1295 2. Such action is for wrongful death, the claimant must
1296 present the claim in writing to the Department of Financial
1297 Services within 2 years after the claim accrues.

1298 (7) In actions brought pursuant to this section, process
1299 shall be served upon the head of the agency concerned and also,
1300 except as to a defendant municipality, county, or the Florida
1301 Space Authority, upon the Department of Financial Services; and
1302 the department or the agency concerned shall have 30 days within
1303 which to plead thereto.



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1304 Section 34. Subsections (3) and (4) and paragraph (e) of
1305 subsection (5) of section 288.706, Florida Statutes, are amended
1306 to read:

1307 288.706 Florida Minority Business Loan Mobilization
1308 Program.-

1309 (3) Notwithstanding ss. 215.422(15) and 216.181(16) ~~ss-~~
1310 ~~215.422(14) and 216.181(16)~~, and pursuant to s. 216.351, under
1311 the Florida Minority Business Loan Mobilization Program, a state
1312 agency may disburse up to 10 percent of the base contract award
1313 amount to assist a minority business enterprise vendor that is
1314 awarded a state agency contract for goods or services in
1315 obtaining working capital financing as provided in subsection
1316 (5).

1317 (4) Notwithstanding ss. 215.422(15) and 216.181(16) ~~ss-~~
1318 ~~215.422(14) and 216.181(16)~~, and pursuant to s. 216.351, in lieu
1319 of applying for participation in the Florida Minority Business
1320 Loan Mobilization Program, a minority business enterprise vendor
1321 awarded a state agency contract for the performance of
1322 professional services may apply with that contracting state
1323 agency for up to 5 percent of the base contract award amount.
1324 The contracting state agency may award such advance in order to
1325 facilitate the performance of that contract.

1326 (5) The following Florida Minority Business Loan
1327 Mobilization Program procedures apply to minority business
1328 enterprise vendors for contracts awarded by a state agency for
1329 construction or professional services or for the provision of
1330 goods or services:

1331 (e) The following procedures shall apply when the minority
1332 business enterprise is the prime contract vendor to the



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1333 contracting state agency:
1334 1. Pursuant to s. 216.351, ss. 215.422(15) and 216.181(16)
1335 ~~the provisions of ss. 215.422(14) and 216.181(16)~~ do not apply
1336 to this paragraph.
1337 2. For construction contracts, the designated loan
1338 mobilization payment shall be disbursed when:
1339 a. The minority business enterprise prime contract vendor
1340 requests disbursement in the first application for payment.
1341 b. The contracting state agency has issued a notice to
1342 proceed and has approved the first application for payment.
1343 3. For contracts other than construction contracts, the
1344 designated loan mobilization payment shall be disbursed when:
1345 a. The minority business enterprise prime contract vendor
1346 requests disbursement by letter delivered to the contracting
1347 state agency after the execution of the contract but prior to
1348 the commencement of work.
1349 b. The contracting state agency has approved the minority
1350 business enterprise prime contract vendor's letter of request.
1351 4. The designated loan mobilization payment may be paid by
1352 the contracting state agency prior to the commencement of work.
1353 In order to ensure that the contract time provisions do not
1354 commence until the minority business enterprise prime contract
1355 vendor has adequate working capital, the contract documents may
1356 provide that the contract shall commence at such time as the
1357 contracting state agency releases the designated loan
1358 mobilization payment to the minority business enterprise prime
1359 contract vendor and participating financial institution pursuant
1360 to the working capital agreement.
1361 Section 35. Section 626.7315, Florida Statutes, is amended



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1362 to read:
1363 626.7315 Prohibition against the unlicensed transaction of
1364 general lines insurance.—With respect to any line of authority
1365 as defined in s. 626.015(7) ~~s. 626.015(5)~~, no individual shall,
1366 unless licensed as a general lines agent:
1367 (1) Solicit insurance or procure applications therefor;
1368 (2) In this state, receive or issue a receipt for any money
1369 on account of or for any insurer, or receive or issue a receipt
1370 for money from other persons to be transmitted to any insurer
1371 for a policy, contract, or certificate of insurance or any
1372 renewal thereof, even though the policy, certificate, or
1373 contract is not signed by him or her as agent or representative
1374 of the insurer, except as provided in s. 626.0428(1);
1375 (3) Directly or indirectly represent himself or herself to
1376 be an agent of any insurer or as an agent, to collect or forward
1377 any insurance premium, or to solicit, negotiate, effect,
1378 procure, receive, deliver, or forward, directly or indirectly,
1379 any insurance contract or renewal thereof or any endorsement
1380 relating to an insurance contract, or attempt to effect the
1381 same, of property or insurable business activities or interests,
1382 located in this state;
1383 (4) In this state, engage or hold himself or herself out as
1384 engaging in the business of analyzing or abstracting insurance
1385 policies or of counseling or advising or giving opinions, other
1386 than as a licensed attorney at law, relative to insurance or
1387 insurance contracts, for fee, commission, or other compensation,
1388 other than as a salaried bona fide full-time employee so
1389 counseling and advising his or her employer relative to the
1390 insurance interests of the employer and of the subsidiaries or



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1391 business affiliates of the employer;
1392 (5) In any way, directly or indirectly, make or cause to be
1393 made, or attempt to make or cause to be made, any contract of
1394 insurance for or on account of any insurer;

1395 (6) Solicit, negotiate, or in any way, directly or
1396 indirectly, effect insurance contracts, if a member of a
1397 partnership or association, or a stockholder, officer, or agent
1398 of a corporation which holds an agency appointment from any
1399 insurer; or

1400 (7) Receive or transmit applications for suretyship, or
1401 receive for delivery bonds founded on applications forwarded
1402 from this state, or otherwise procure suretyship to be effected
1403 by a surety insurer upon the bonds of persons in this state or
1404 upon bonds given to persons in this state.

1405 Section 36. Paragraph (c) of subsection (6) of section
1406 627.351, Florida Statutes, is amended to read:

1407 627.351 Insurance risk apportionment plans.—

1408 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

1409 (c) The corporation's plan of operation:

1410 1. Must provide for adoption of residential property and
1411 casualty insurance policy forms and commercial residential and
1412 nonresidential property insurance forms, which must be approved
1413 by the office before use. The corporation shall adopt the
1414 following policy forms:

1415 a. Standard personal lines policy forms that are
1416 comprehensive multiperil policies providing full coverage of a
1417 residential property equivalent to the coverage provided in the
1418 private insurance market under an HO-3, HO-4, or HO-6 policy.

1419 b. Basic personal lines policy forms that are policies



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1420 similar to an HO-8 policy or a dwelling fire policy that provide
1421 coverage meeting the requirements of the secondary mortgage
1422 market, but which is more limited than the coverage under a
1423 standard policy.

1424 c. Commercial lines residential and nonresidential policy
1425 forms that are generally similar to the basic perils of full
1426 coverage obtainable for commercial residential structures and
1427 commercial nonresidential structures in the admitted voluntary
1428 market.

1429 d. Personal lines and commercial lines residential property
1430 insurance forms that cover the peril of wind only. The forms are
1431 applicable only to residential properties located in areas
1432 eligible for coverage under the coastal account referred to in
1433 sub-subparagraph (b)2.a.

1434 e. Commercial lines nonresidential property insurance forms
1435 that cover the peril of wind only. The forms are applicable only
1436 to nonresidential properties located in areas eligible for
1437 coverage under the coastal account referred to in sub-
1438 subparagraph (b)2.a.

1439 f. The corporation may adopt variations of the policy forms
1440 listed in sub-subparagraphs a.-e. which contain more restrictive
1441 coverage.

1442 g. Effective January 1, 2013, the corporation shall offer a
1443 basic personal lines policy similar to an HO-8 policy with
1444 dwelling repair based on common construction materials and
1445 methods.

1446 2. Must provide that the corporation adopt a program in
1447 which the corporation and authorized insurers enter into quota
1448 share primary insurance agreements for hurricane coverage, as



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1449 defined in s. 627.4025(2)(a), for eligible risks, and adopt
1450 property insurance forms for eligible risks which cover the
1451 peril of wind only.

1452 a. As used in this subsection, the term:

1453 (I) "Quota share primary insurance" means an arrangement in
1454 which the primary hurricane coverage of an eligible risk is
1455 provided in specified percentages by the corporation and an
1456 authorized insurer. The corporation and authorized insurer are
1457 each solely responsible for a specified percentage of hurricane
1458 coverage of an eligible risk as set forth in a quota share
1459 primary insurance agreement between the corporation and an
1460 authorized insurer and the insurance contract. The
1461 responsibility of the corporation or authorized insurer to pay
1462 its specified percentage of hurricane losses of an eligible
1463 risk, as set forth in the agreement, may not be altered by the
1464 inability of the other party to pay its specified percentage of
1465 losses. Eligible risks that are provided hurricane coverage
1466 through a quota share primary insurance arrangement must be
1467 provided policy forms that set forth the obligations of the
1468 corporation and authorized insurer under the arrangement,
1469 clearly specify the percentages of quota share primary insurance
1470 provided by the corporation and authorized insurer, and
1471 conspicuously and clearly state that the authorized insurer and
1472 the corporation may not be held responsible beyond their
1473 specified percentage of coverage of hurricane losses.

1474 (II) "Eligible risks" means personal lines residential and
1475 commercial lines residential risks that meet the underwriting
1476 criteria of the corporation and are located in areas that were
1477 eligible for coverage by the Florida Windstorm Underwriting



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1478 Association on January 1, 2002.

1479 b. The corporation may enter into quota share primary
1480 insurance agreements with authorized insurers at corporation
1481 coverage levels of 90 percent and 50 percent.

1482 c. If the corporation determines that additional coverage
1483 levels are necessary to maximize participation in quota share
1484 primary insurance agreements by authorized insurers, the
1485 corporation may establish additional coverage levels. However,
1486 the corporation's quota share primary insurance coverage level
1487 may not exceed 90 percent.

1488 d. Any quota share primary insurance agreement entered into
1489 between an authorized insurer and the corporation must provide
1490 for a uniform specified percentage of coverage of hurricane
1491 losses, by county or territory as set forth by the corporation
1492 board, for all eligible risks of the authorized insurer covered
1493 under the agreement.

1494 e. Any quota share primary insurance agreement entered into
1495 between an authorized insurer and the corporation is subject to
1496 review and approval by the office. However, such agreement shall
1497 be authorized only as to insurance contracts entered into
1498 between an authorized insurer and an insured who is already
1499 insured by the corporation for wind coverage.

1500 f. For all eligible risks covered under quota share primary
1501 insurance agreements, the exposure and coverage levels for both
1502 the corporation and authorized insurers shall be reported by the
1503 corporation to the Florida Hurricane Catastrophe Fund. For all
1504 policies of eligible risks covered under such agreements, the
1505 corporation and the authorized insurer must maintain complete
1506 and accurate records for the purpose of exposure and loss



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1507 reimbursement audits as required by fund rules. The corporation
1508 and the authorized insurer shall each maintain duplicate copies
1509 of policy declaration pages and supporting claims documents.

1510 g. The corporation board shall establish in its plan of
1511 operation standards for quota share agreements which ensure that
1512 there is no discriminatory application among insurers as to the
1513 terms of the agreements, pricing of the agreements, incentive
1514 provisions if any, and consideration paid for servicing policies
1515 or adjusting claims.

1516 h. The quota share primary insurance agreement between the
1517 corporation and an authorized insurer must set forth the
1518 specific terms under which coverage is provided, including, but
1519 not limited to, the sale and servicing of policies issued under
1520 the agreement by the insurance agent of the authorized insurer
1521 producing the business, the reporting of information concerning
1522 eligible risks, the payment of premium to the corporation, and
1523 arrangements for the adjustment and payment of hurricane claims
1524 incurred on eligible risks by the claims adjuster and personnel
1525 of the authorized insurer. Entering into a quota sharing
1526 insurance agreement between the corporation and an authorized
1527 insurer is voluntary and at the discretion of the authorized
1528 insurer.

1529 3. May provide that the corporation may employ or otherwise
1530 contract with individuals or other entities to provide
1531 administrative or professional services that may be appropriate
1532 to effectuate the plan. The corporation may borrow funds by
1533 issuing bonds or by incurring other indebtedness, and shall have
1534 other powers reasonably necessary to effectuate the requirements
1535 of this subsection, including, without limitation, the power to



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1536 issue bonds and incur other indebtedness in order to refinance
1537 outstanding bonds or other indebtedness. The corporation may
1538 seek judicial validation of its bonds or other indebtedness
1539 under chapter 75. The corporation may issue bonds or incur other
1540 indebtedness, or have bonds issued on its behalf by a unit of
1541 local government pursuant to subparagraph (q)2. in the absence
1542 of a hurricane or other weather-related event, upon a
1543 determination by the corporation, subject to approval by the
1544 office, that such action would enable it to efficiently meet the
1545 financial obligations of the corporation and that such
1546 financings are reasonably necessary to effectuate the
1547 requirements of this subsection. The corporation may take all
1548 actions needed to facilitate tax-free status for such bonds or
1549 indebtedness, including formation of trusts or other affiliated
1550 entities. The corporation may pledge assessments, projected
1551 recoveries from the Florida Hurricane Catastrophe Fund, other
1552 reinsurance recoverables, policyholder surcharges and other
1553 surcharges, and other funds available to the corporation as
1554 security for bonds or other indebtedness. In recognition of s.
1555 10, Art. I of the State Constitution, prohibiting the impairment
1556 of obligations of contracts, it is the intent of the Legislature
1557 that no action be taken whose purpose is to impair any bond
1558 indenture or financing agreement or any revenue source committed
1559 by contract to such bond or other indebtedness.

1560 4. Must require that the corporation operate subject to the
1561 supervision and approval of a board of governors consisting of
1562 nine individuals who are residents of this state and who are
1563 from different geographical areas of the state, one of whom is
1564 appointed by the Governor and serves solely to advocate on



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1565 behalf of the consumer. The appointment of a consumer
1566 representative by the Governor is deemed to be within the scope
1567 of the exemption provided in s. 112.313(7) (b) and is in addition
1568 to the appointments authorized under sub-subparagraph a.

1569 a. The Governor, the Chief Financial Officer, the President
1570 of the Senate, and the Speaker of the House of Representatives
1571 shall each appoint two members of the board. At least one of the
1572 two members appointed by each appointing officer must have
1573 demonstrated expertise in insurance and be deemed to be within
1574 the scope of the exemption provided in s. 112.313(7) (b). The
1575 Chief Financial Officer shall designate one of the appointees as
1576 chair. All board members serve at the pleasure of the appointing
1577 officer. All members of the board are subject to removal at will
1578 by the officers who appointed them. All board members, including
1579 the chair, must be appointed to serve for 3-year terms beginning
1580 annually on a date designated by the plan. However, for the
1581 first term beginning on or after July 1, 2009, each appointing
1582 officer shall appoint one member of the board for a 2-year term
1583 and one member for a 3-year term. A board vacancy shall be
1584 filled for the unexpired term by the appointing officer. The
1585 Chief Financial Officer shall appoint a technical advisory group
1586 to provide information and advice to the board in connection
1587 with the board's duties under this subsection. The executive
1588 director and senior managers of the corporation shall be engaged
1589 by the board and serve at the pleasure of the board. Any
1590 executive director appointed on or after July 1, 2006, is
1591 subject to confirmation by the Senate. The executive director is
1592 responsible for employing other staff as the corporation may
1593 require, subject to review and concurrence by the board.



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1594 b. The board shall create a Market Accountability Advisory
1595 Committee to assist the corporation in developing awareness of
1596 its rates and its customer and agent service levels in
1597 relationship to the voluntary market insurers writing similar
1598 coverage.

1599 (I) The members of the advisory committee consist of the
1600 following 11 persons, one of whom must be elected chair by the
1601 members of the committee: four representatives, one appointed by
1602 the Florida Association of Insurance Agents, one by the Florida
1603 Association of Insurance and Financial Advisors, one by the
1604 Professional Insurance Agents of Florida, and one by the Latin
1605 American Association of Insurance Agencies; three
1606 representatives appointed by the insurers with the three highest
1607 voluntary market share of residential property insurance
1608 business in the state; one representative from the Office of
1609 Insurance Regulation; one consumer appointed by the board who is
1610 insured by the corporation at the time of appointment to the
1611 committee; one representative appointed by the Florida
1612 Association of Realtors; and one representative appointed by the
1613 Florida Bankers Association. All members shall be appointed to
1614 3-year terms and may serve for consecutive terms.

1615 (II) The committee shall report to the corporation at each
1616 board meeting on insurance market issues which may include rates
1617 and rate competition with the voluntary market; service,
1618 including policy issuance, claims processing, and general
1619 responsiveness to policyholders, applicants, and agents; and
1620 matters relating to depopulation.

1621 5. Must provide a procedure for determining the eligibility
1622 of a risk for coverage, as follows:



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1623 a. Subject to s. 627.3517, with respect to personal lines
1624 residential risks, if the risk is offered coverage from an
1625 authorized insurer at the insurer's approved rate under a
1626 standard policy including wind coverage or, if consistent with
1627 the insurer's underwriting rules as filed with the office, a
1628 basic policy including wind coverage, for a new application to
1629 the corporation for coverage, the risk is not eligible for any
1630 policy issued by the corporation unless the premium for coverage
1631 from the authorized insurer is more than 15 percent greater than
1632 the premium for comparable coverage from the corporation.
1633 Whenever an offer of coverage for a personal lines residential
1634 risk is received for a policyholder of the corporation at
1635 renewal from an authorized insurer, if the offer is equal to or
1636 less than the corporation's renewal premium for comparable
1637 coverage, the risk is not eligible for coverage with the
1638 corporation. If the risk is not able to obtain such offer, the
1639 risk is eligible for a standard policy including wind coverage
1640 or a basic policy including wind coverage issued by the
1641 corporation; however, if the risk could not be insured under a
1642 standard policy including wind coverage regardless of market
1643 conditions, the risk is eligible for a basic policy including
1644 wind coverage unless rejected under subparagraph 8. However, a
1645 policyholder removed from the corporation through an assumption
1646 agreement remains eligible for coverage from the corporation
1647 until the end of the assumption period. The corporation shall
1648 determine the type of policy to be provided on the basis of
1649 objective standards specified in the underwriting manual and
1650 based on generally accepted underwriting practices.
1651 (I) If the risk accepts an offer of coverage through the



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1652 market assistance plan or through a mechanism established by the
1653 corporation other than a plan established by s. 627.3518, before
1654 a policy is issued to the risk by the corporation or during the
1655 first 30 days of coverage by the corporation, and the producing
1656 agent who submitted the application to the plan or to the
1657 corporation is not currently appointed by the insurer, the
1658 insurer shall:
1659 (A) Pay to the producing agent of record of the policy for
1660 the first year, an amount that is the greater of the insurer's
1661 usual and customary commission for the type of policy written or
1662 a fee equal to the usual and customary commission of the
1663 corporation; or
1664 (B) Offer to allow the producing agent of record of the
1665 policy to continue servicing the policy for at least 1 year and
1666 offer to pay the agent the greater of the insurer's or the
1667 corporation's usual and customary commission for the type of
1668 policy written.
1669
1670 If the producing agent is unwilling or unable to accept
1671 appointment, the new insurer shall pay the agent in accordance
1672 with sub-sub-sub-subparagraph (A).
1673 (II) If the corporation enters into a contractual agreement
1674 for a take-out plan, the producing agent of record of the
1675 corporation policy is entitled to retain any unearned commission
1676 on the policy, and the insurer shall:
1677 (A) Pay to the producing agent of record, for the first
1678 year, an amount that is the greater of the insurer's usual and
1679 customary commission for the type of policy written or a fee
1680 equal to the usual and customary commission of the corporation;



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1681 or
1682 (B) Offer to allow the producing agent of record to
1683 continue servicing the policy for at least 1 year and offer to
1684 pay the agent the greater of the insurer's or the corporation's
1685 usual and customary commission for the type of policy written.
1686
1687 If the producing agent is unwilling or unable to accept
1688 appointment, the new insurer shall pay the agent in accordance
1689 with sub-sub-sub-paragraph (A).
1690 b. With respect to commercial lines residential risks, for
1691 a new application to the corporation for coverage, if the risk
1692 is offered coverage under a policy including wind coverage from
1693 an authorized insurer at its approved rate, the risk is not
1694 eligible for a policy issued by the corporation unless the
1695 premium for coverage from the authorized insurer is more than 15
1696 percent greater than the premium for comparable coverage from
1697 the corporation. Whenever an offer of coverage for a commercial
1698 lines residential risk is received for a policyholder of the
1699 corporation at renewal from an authorized insurer, if the offer
1700 is equal to or less than the corporation's renewal premium for
1701 comparable coverage, the risk is not eligible for coverage with
1702 the corporation. If the risk is not able to obtain any such
1703 offer, the risk is eligible for a policy including wind coverage
1704 issued by the corporation. However, a policyholder removed from
1705 the corporation through an assumption agreement remains eligible
1706 for coverage from the corporation until the end of the
1707 assumption period.
1708 (I) If the risk accepts an offer of coverage through the
1709 market assistance plan or through a mechanism established by the



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1710 corporation other than a plan established by s. 627.3518, before
1711 a policy is issued to the risk by the corporation or during the
1712 first 30 days of coverage by the corporation, and the producing
1713 agent who submitted the application to the plan or the
1714 corporation is not currently appointed by the insurer, the
1715 insurer shall:
1716 (A) Pay to the producing agent of record of the policy, for
1717 the first year, an amount that is the greater of the insurer's
1718 usual and customary commission for the type of policy written or
1719 a fee equal to the usual and customary commission of the
1720 corporation; or
1721 (B) Offer to allow the producing agent of record of the
1722 policy to continue servicing the policy for at least 1 year and
1723 offer to pay the agent the greater of the insurer's or the
1724 corporation's usual and customary commission for the type of
1725 policy written.
1726
1727 If the producing agent is unwilling or unable to accept
1728 appointment, the new insurer shall pay the agent in accordance
1729 with sub-sub-sub-paragraph (A).
1730 (II) If the corporation enters into a contractual agreement
1731 for a take-out plan, the producing agent of record of the
1732 corporation policy is entitled to retain any unearned commission
1733 on the policy, and the insurer shall:
1734 (A) Pay to the producing agent of record, for the first
1735 year, an amount that is the greater of the insurer's usual and
1736 customary commission for the type of policy written or a fee
1737 equal to the usual and customary commission of the corporation;
1738 or



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1739 (B) Offer to allow the producing agent of record to
1740 continue servicing the policy for at least 1 year and offer to
1741 pay the agent the greater of the insurer's or the corporation's
1742 usual and customary commission for the type of policy written.
1743

1744 If the producing agent is unwilling or unable to accept
1745 appointment, the new insurer shall pay the agent in accordance
1746 with sub-sub-sub-paragraph (A).

1747 c. For purposes of determining comparable coverage under
1748 sub-paragraphs a. and b., the comparison must be based on
1749 those forms and coverages that are reasonably comparable. The
1750 corporation may rely on a determination of comparable coverage
1751 and premium made by the producing agent who submits the
1752 application to the corporation, made in the agent's capacity as
1753 the corporation's agent. A comparison may be made solely of the
1754 premium with respect to the main building or structure only on
1755 the following basis: the same coverage A or other building
1756 limits; the same percentage hurricane deductible that applies on
1757 an annual basis or that applies to each hurricane for commercial
1758 residential property; the same percentage of ordinance and law
1759 coverage, if the same limit is offered by both the corporation
1760 and the authorized insurer; the same mitigation credits, to the
1761 extent the same types of credits are offered both by the
1762 corporation and the authorized insurer; the same method for loss
1763 payment, such as replacement cost or actual cash value, if the
1764 same method is offered both by the corporation and the
1765 authorized insurer in accordance with underwriting rules; and
1766 any other form or coverage that is reasonably comparable as
1767 determined by the board. If an application is submitted to the



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1768 corporation for wind-only coverage in the coastal account, the
1769 premium for the corporation's wind-only policy plus the premium
1770 for the ex-wind policy that is offered by an authorized insurer
1771 to the applicant must be compared to the premium for multiperil
1772 coverage offered by an authorized insurer, subject to the
1773 standards for comparison specified in this subparagraph. If the
1774 corporation or the applicant requests from the authorized
1775 insurer a breakdown of the premium of the offer by types of
1776 coverage so that a comparison may be made by the corporation or
1777 its agent and the authorized insurer refuses or is unable to
1778 provide such information, the corporation may treat the offer as
1779 not being an offer of coverage from an authorized insurer at the
1780 insurer's approved rate.

1781 6. Must include rules for classifications of risks and
1782 rates.

1783 7. Must provide that if premium and investment income for
1784 an account attributable to a particular calendar year are in
1785 excess of projected losses and expenses for the account
1786 attributable to that year, such excess shall be held in surplus
1787 in the account. Such surplus must be available to defray
1788 deficits in that account as to future years and used for that
1789 purpose before assessing assessable insurers and assessable
1790 insureds as to any calendar year.

1791 8. Must provide objective criteria and procedures to be
1792 uniformly applied to all applicants in determining whether an
1793 individual risk is so hazardous as to be uninsurable. In making
1794 this determination and in establishing the criteria and
1795 procedures, the following must be considered:

1796 a. Whether the likelihood of a loss for the individual risk



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1797 is substantially higher than for other risks of the same class;
1798 and

1799 b. Whether the uncertainty associated with the individual
1800 risk is such that an appropriate premium cannot be determined.

1801
1802 The acceptance or rejection of a risk by the corporation shall
1803 be construed as the private placement of insurance, and the
1804 provisions of chapter 120 do not apply.

1805 9. Must provide that the corporation make its best efforts
1806 to procure catastrophe reinsurance at reasonable rates, to cover
1807 its projected 100-year probable maximum loss as determined by
1808 the board of governors.

1809 10. The policies issued by the corporation must provide
1810 that if the corporation or the market assistance plan obtains an
1811 offer from an authorized insurer to cover the risk at its
1812 approved rates, the risk is no longer eligible for renewal
1813 through the corporation, except as otherwise provided in this
1814 subsection.

1815 11. Corporation policies and applications must include a
1816 notice that the corporation policy could, under this section, be
1817 replaced with a policy issued by an authorized insurer which
1818 does not provide coverage identical to the coverage provided by
1819 the corporation. The notice must also specify that acceptance of
1820 corporation coverage creates a conclusive presumption that the
1821 applicant or policyholder is aware of this potential.

1822 12. May establish, subject to approval by the office,
1823 different eligibility requirements and operational procedures
1824 for any line or type of coverage for any specified county or
1825 area if the board determines that such changes are justified due



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1826 to the voluntary market being sufficiently stable and
1827 competitive in such area or for such line or type of coverage
1828 and that consumers who, in good faith, are unable to obtain
1829 insurance through the voluntary market through ordinary methods
1830 continue to have access to coverage from the corporation. If
1831 coverage is sought in connection with a real property transfer,
1832 the requirements and procedures may not provide an effective
1833 date of coverage later than the date of the closing of the
1834 transfer as established by the transferor, the transferee, and,
1835 if applicable, the lender.

1836 13. Must provide that, with respect to the coastal account,
1837 any assessable insurer with a surplus as to policyholders of \$25
1838 million or less writing 25 percent or more of its total
1839 countrywide property insurance premiums in this state may
1840 petition the office, within the first 90 days of each calendar
1841 year, to qualify as a limited apportionment company. A regular
1842 assessment levied by the corporation on a limited apportionment
1843 company for a deficit incurred by the corporation for the
1844 coastal account may be paid to the corporation on a monthly
1845 basis as the assessments are collected by the limited
1846 apportionment company from its insureds, but a limited
1847 apportionment company must begin collecting the regular
1848 assessments not later than 90 days after the regular assessments
1849 are levied by the corporation, and the regular assessments must
1850 be paid in full within 15 months after being levied by the
1851 corporation. A limited apportionment company shall collect from
1852 its policyholders any emergency assessment imposed under sub-
1853 subparagraph (b)3.d. The plan must provide that, if the office
1854 determines that any regular assessment will result in an



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1855 impairment of the surplus of a limited apportionment company,
1856 the office may direct that all or part of such assessment be
1857 deferred as provided in subparagraph (q)4. However, an emergency
1858 assessment to be collected from policyholders under sub-
1859 subparagraph (b)3.d. may not be limited or deferred.

1860 14. Must provide that the corporation appoint as its
1861 licensed agents only those agents who throughout such
1862 appointments also hold an appointment as defined in s. 626.015
1863 ~~s. 626.015(3)~~ by an insurer who is authorized to write and is
1864 actually writing or renewing personal lines residential property
1865 coverage, commercial residential property coverage, or
1866 commercial nonresidential property coverage within the state.

1867 15. Must provide a premium payment plan option to its
1868 policyholders which, at a minimum, allows for quarterly and
1869 semiannual payment of premiums. A monthly payment plan may, but
1870 is not required to, be offered.

1871 16. Must limit coverage on mobile homes or manufactured
1872 homes built before 1994 to actual cash value of the dwelling
1873 rather than replacement costs of the dwelling.

1874 17. Must provide coverage for manufactured or mobile home
1875 dwellings. Such coverage must also include the following
1876 attached structures:

1877 a. Screened enclosures that are aluminum framed or screened
1878 enclosures that are not covered by the same or substantially the
1879 same materials as those of the primary dwelling;

1880 b. Carports that are aluminum or carports that are not
1881 covered by the same or substantially the same materials as those
1882 of the primary dwelling; and

1883 c. Patios that have a roof covering that is constructed of



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1884 materials that are not the same or substantially the same
1885 materials as those of the primary dwelling.

1886
1887 The corporation shall make available a policy for mobile homes
1888 or manufactured homes for a minimum insured value of at least
1889 \$3,000.

1890 18. May provide such limits of coverage as the board
1891 determines, consistent with the requirements of this subsection.

1892 19. May require commercial property to meet specified
1893 hurricane mitigation construction features as a condition of
1894 eligibility for coverage.

1895 20. Must provide that new or renewal policies issued by the
1896 corporation on or after January 1, 2012, which cover sinkhole
1897 loss do not include coverage for any loss to appurtenant
1898 structures, driveways, sidewalks, decks, or patios that are
1899 directly or indirectly caused by sinkhole activity. The
1900 corporation shall exclude such coverage using a notice of
1901 coverage change, which may be included with the policy renewal,
1902 and not by issuance of a notice of nonrenewal of the excluded
1903 coverage upon renewal of the current policy.

1904 21. As of January 1, 2012, must require that the agent
1905 obtain from an applicant for coverage from the corporation an
1906 acknowledgment signed by the applicant, which includes, at a
1907 minimum, the following statement:

1908
1909 ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
1910 AND ASSESSMENT LIABILITY:

1911
1912 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE



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1913 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A
1914 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,
1915 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND
1916 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE
1917 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT
1918 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA
1919 LEGISLATURE.

1920 2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER
1921 SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM,
1922 BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO
1923 BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN
1924 PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE
1925 WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES
1926 ARE REGULATED AND APPROVED BY THE STATE.

1927 3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY
1928 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER
1929 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE
1930 FLORIDA LEGISLATURE.

1931 4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE
1932 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE
1933 STATE OF FLORIDA.

1934
1935 a. The corporation shall maintain, in electronic format or
1936 otherwise, a copy of the applicant's signed acknowledgment and
1937 provide a copy of the statement to the policyholder as part of
1938 the first renewal after the effective date of this subparagraph.

1939 b. The signed acknowledgment form creates a conclusive
1940 presumption that the policyholder understood and accepted his or
1941 her potential surcharge and assessment liability as a



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1942 policyholder of the corporation.

1943 Section 37. This act shall take effect July 1, 2017.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 986

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Stargel

SUBJECT: Department of Financial Services

DATE: April 21, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2. <u>Sanders</u>	<u>Betta</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3. <u>Sanders</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 986 makes various changes to statutes relating to the Department of Financial Services (DFS). The bill addresses clean-up issues at the Department of Financial Services within the Divisions of Treasury, Accounting and Auditing, State Fire Marshal, Agent and Agency Services and Risk Management.

The bill:

- Renames the Treasury Investment Committee as the Treasury Investment Council within the Division of Treasury and provides for the duties of the Council;
- Applies certain requirements relating to payments, warrants, and invoices to payments made in relation to certain agreements funded with federal or state assistance;
- Updates the 1991 Boiler Safety Act (Act) as to installation requirements, who can conduct inspections of boilers in public assembly locations, continuing education of inspectors, and changes criminal penalties to administrative fines for violations of the Act;
- Authorizes the DFS the authority to use appropriated funds for the purpose of professional development and training courses;
- Allows licensed individuals who are active participants in insurance associations to annually earn continuing education credits;
- Provides that the Division of Agent and Agency Services may not issue a license until an applicant with a criminal history has paid all fines, restitution, and court costs;
- Removes the statute of limitations for actions relating to the Holocaust Victims Assistance Program;

- Allows for the use of firefighter's confidential information for the purposes of certain studies;
- Removes a requirement for an individual to send a written notice of claim or serve a summons on the DFS for an action against a county.

The bill has an indeterminate impact on state revenue and expenditures. The DFS may see an increase in compliance and administrative litigation as its regulatory role significantly increases.¹

The bill has an effective date of July 1, 2017.

II. Present Situation:

The Chief Financial Officer (CFO) is a member of the Cabinet and serves as the chief fiscal officer of the state. The CFO is agency head of the DFS. The DFS performs a wide variety of functions. For example, the DFS processes various state payments, warrants, and invoices. It administers the Boiler Safety Act.² The DFS regulates insurance agencies, agents, and insurance adjusters. The following sections summarize various issues addressed by PCS/CS/SB 986.

Treasury Investment Committee

Section 17.575, F.S., creates the Treasury Investment Committee (TIC) within the DFS' Division of Treasury. It consists of five members appointed by the CFO who possess special knowledge, experience, and familiarity in finance, investments, or accounting. The TIC administers the Treasury Investment Program consistent with policies approved by the CFO for deposits and investments of public funds. Section 1 of the bill changes this program.

Payment of Vendor Invoices by the State

Section 215.422, F.S., governs payments by state agencies or the judicial branch to vendors. An invoice submitted to a state agency or the judicial branch must be:

- Recorded in the financial systems of the state;
- Approved for payment by the agency or the judicial branch; and,
- Filed with the CFO no later than 20 days after receipt of the invoice, unless there is a dispute or some other reason not to pay.³

In most cases, the DFS must approve payment of an invoice no later than 10 days after the agency the approved invoice.

If a warrant in payment of an invoice is not issued within 40 days after receipt of the invoice and receipt, inspection, and approval of the goods and services, the agency or judicial branch must pay to the vendor interest at the statutory interest rate.

¹ The Department of Financial Services, *Senate Bill 986 Fiscal Analysis* (on file with the Senate Appropriations Subcommittee on General Government).

² Sections 554.1011-554.115, F.S.

³ Section 215.422(1), F.S.

The interest requirements do not apply to payments for agreements funded with state or federal financial assistance pursuant to s. 215.971, F.S.

The Boiler Safety Act

A boiler is “a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam is superheated, or any combination of these functions is accomplished, under pressure or vacuum, for use external to itself, by the direct application of energy from the combustion of fuels or from electricity or solar energy. The term “boiler” includes fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.”⁴ Florida’s Boiler Safety Act (Act) provides requirements for installation of boilers in public assembly locations, boiler code requirements, education requirements, and penalties for violations. The Act has remained essentially unchanged since 1991.

The DFS administers the Act. Sections 3-17 of this bill make changes to the Act.

Regulation of Insurance Agents and Adjusters

The DFS’ Division of Insurance Agents and Agency Services regulates insurance agents, agencies, and adjusters. The regulation includes licensing, disciplinary actions, and education. Sections 18-30 of the bill revise provisions relating to agent and adjuster regulation.

Notice of Actions against the State

Section 768.28, F.S., is the state’s waiver of sovereign immunity statute. The DFS’ Division of Risk Management is responsible for the management of claims reported by or against state agencies and universities for coverage under the self-insurance fund known as the "State Risk Management Trust Fund."⁵ Section 768.28, F.S., requires notice or service on DFS in certain situations. Section 33 of the bill amends those provisions.

III. Effect of Proposed Changes:

Treasury Investment Council

Section 1 amends s. 17.575, F.S. This section changes the name of the Treasury Investment Committee to the Treasury Investment Council (council). It requires that three of the five council members be from the private sector. Current members serve at the pleasure of the CFO. The bill changes the term to four years from the date of appointment but retains the ability of the CFO to remove members. The bill requires the council to review the investments required by s. 17.57, F.S., and meet with staff of the Division of Treasury at least biannually. The council will provide recommendations to the Division of Treasury and the CFO regarding investment policy, strategy, and procedures. It provides that council members may receive per diem and travel expenses pursuant to s. 112.061, F.S.

⁴ Section 554.1021(1), F.S.

⁵ <http://www.myfloridacfo.com/Division/Risk/> (last accessed March 10, 2017).

Payment of Vendor Invoices by the State

Section 2 provides that the payment requirements of s. 215.422, F.S., including payment of interest for late payments, apply to agreements involving state or federal financial assistance in s. 215.971, F.S.

In the event the agreements are not paid timely, the Division of Auditing may have a slight impact to processing a few additional interest payments and vouchers.⁶

Boiler Safety Act (Sections 3 through 18)

The bill amends and reorganizes the Boiler Safety Act.

Section 3 amends s. 554.1021, F.S., to define “authorized inspection agency” so that various entities are allowed to conduct boiler inspections if their boiler inspectors hold valid certificates of compliance.

Entities include local governments or governmental subdivisions that have adopted into law the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers⁷ and National Board Inspection Code for the construction, installation, inspection, maintenance, and repair of boilers to regulate boilers in public assembly locations.⁸ The bill includes insurers authorized to transact boiler and machinery insurance in Florida and inspecting agencies accredited in accordance with the National Board of Boiler and Pressure Vessel Inspector’s program entitled “Accreditation of Authorized Inspection Agencies (AIA) Performing Inservice or Repair/Alteration Inspection Activities,” document number NB-369, as authorized inspection agencies.⁹

This section defines the following terms:

- “Inservice boiler” is a boiler placed in use after test firing and required inspections have been satisfactorily completed;
- “Operating boiler” means a boiler connected and ready for use;
- “Secured boiler” means a boiler that has been:
 - Physically disconnected from the system, including disconnection from fuel, water, steam, electricity and stack;
 - Locked out and tagged out in accordance with the Occupational Safety and Health Administration’s standard relating to the control of hazardous energy and lockout or tagout in 29 C.F.R. s. 1910.147, as adopted by rule of this department.
- “Authorized inspection agency” means:
 - Any county, municipality, town or other governmental subdivision that has adopted into law the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers (ASME) and the National Board Inspection Code for the construction,

⁶ Department of Financial Services, *Senate Bill 986 Fiscal Analysis* (on file with the Senate Appropriations Subcommittee on General Government).

⁷ https://www.asme.org/getmedia/1adfc3df-7dab-44bf-a078-8b1c7d60bf0d/ASME_BPVC_2013-Brochure.aspx (last accessed March 10, 2017).

⁸ <http://www.nationalboard.org/Index.aspx?pageID=4> (last accessed March 10, 2017).

⁹ <https://www.nationalboard.org/SiteDocuments/Commissioned%20Inspectors/NB-369.pdf> (last accessed March 10, 2017).

- installation, inspection, maintenance, and repair of boilers to regulate boilers in public assembly locations, and whose boiler inspectors hold valid certificates of competency in accordance with s. 554.104, F.S.;
- An insurer authorized by a subsisting certificate of authority, issued by the OIR, to transact boiler and machinery insurance in this state, and whose boiler inspectors hold valid certificates of competency in accordance with s. 554.102, F.S.; and,
 - An inspecting agency accredited in accordance with the National Board of Boiler and Pressure Vessel Inspector's program entitled "Accreditation of Authorized Inspection Agencies (AIA) Performing Inservice or Repair/Alteration Inspection Activities," document number NB-369, and whose boiler inspectors hold valid certificates of competency in accordance with s. 554,104, F.S. The department shall by rule require an inspection agency authorized pursuant to this paragraph to maintain financial security adequate to indemnify the owner of the boiler if such agency's negligence or failure to inspect an uninsured boiler results in a loss. Such inspection agency may inspect uninsured boilers or, at the direction of an insurance company, may inspect a boiler insured by that insurance company; and
 - "Boiler insurance company" means a company authorized by a subsisting certificate of authority, issued by the OIR, to transact boiler and machinery insurance in this state.

Section 4 amends s. 554.103, F.S., to require the installer of any boiler place in use after January 1, 2018, to apply for a permit to install the boiler with the chief boiler inspector.¹⁰ The application must be on a form adopted by the DFS by rule. Before installing a boiler, the installer's application must include the ASME manufacturer's data report and other information required by law.¹¹ The installer must contact the chief boiler inspector to schedule an inspection no later than seven days before the boiler is placed into service.

Current law allows the DFS, at its discretion, to authorize the construction, installation, and operation of boilers of special design or construction which do not meet the specific requirements of the State Boiler Code (Code), but which are consistent with the safety objectives of the Code.

Section 5 amends s. 554.104, F.S. The bill amends the certification system for boiler inspectors. Most of the amended s. 554.104, F.S., is current law in ss. 554.112 and 554.113, F.S. **Section 14** repeals those sections. The bill provides that a person may not be, act as, or advertise or hold himself or herself out to be a boiler inspector unless he or she holds a certificate of competency issued by the DFS. A person seeking certification must apply to take the certification examination.¹² A person may take the certification examination if:

- Has submitted the application for examination and the required fee;
- Is at least 18 years of age;
- Has completed the 2-hour training course; and
- Has at least 3 years of experience in the construction, installation, inspection, operation, maintenance, or repair of high pressure, high temperature water boilers; or

¹⁰ The chief boiler inspector is appointed by the CFO pursuant to s. 554.105, F.S.

¹¹ Current law requires the information at least 90 days after the boiler is placed in service. s. 554.103(2), F.S.

¹² The examination required by the bill is the examination administered by the National Board of Boiler and Pressure Vessel Inspectors.

- Meets the requirements to qualify as a commissioned inspector by the National Board of Boiler and Pressure Vessel Inspectors as set forth in NB-263, RCI-1, Rules Commissioned Inspectors, as adopted by DFS rule.

The bill creates a two-hour training course requirement. The bill requires the DFS to adopt by rule a two-hour training course on the requirements of the Boiler Safety Act and related rules. DFS shall make the course available online and may make the course available in a classroom. The bill allows a boiler insurance company to include the DFS course as part of its training of boiler inspector students. Any boiler insurance company who makes the DFS course part of its in-house training must indicate the student received such training at the time of application for certification of competency.

The chief boiler inspection must issue a certificate of competency to an applicant who meets the qualifications, passes the required examination, and obtains a commission from the National Board of Boiler and Pressure Vessel Inspectors.

A certificate of competency expires on December 31 of each year and may be renewed upon the filing of a renewal application with the DFS. If available on the DFS website, the applicant must use a secured electronic application.

The bill moves the current language of s. 554.104, F.S., relating to the approval of boilers of special design to s. 554.103, F.S.

Section 6 amends s. 554.105, F.S., to change the title “chief inspector” to “chief boiler inspector” and makes technical changes.

Section 7 amends s. 554.106, F.S., to change the title “deputy inspector” to “deputy boiler inspector.” It provides that deputy boiler inspectors will conduct inspections of uninsured boilers and engage in public outreach and other duties as assigned by the chief boiler inspector.

Section 8 amends s. 554.107, F.S., to change the title of “special inspector” to “special boiler inspector” and makes conforming changes for consistency with other changes made by the bill.

Section 9 amends s. 554.108, F.S., requires inspections of boilers in public assembly locations within 30 days after the expiration of the boiler’s certificate of operation and provides reporting requirements.

This section exempts potable hot water supply boiler with a heat input of 200,000 British thermal units (Btu) per hour and above, up to a heat input not exceeding 400,000 Btu per hour, from inspection. The exemption clarifies the boiler must be stamped with ASME code symbol “HLW” and the boiler’s ASME data report must be filed as required under s. 554.103(2), F.S.

This section provides if the chief boiler inspector, deputy boiler inspector, or special boiler inspector discovers a violation of any provision of the State Boiler Code, the inspector must promptly notify the owner or user or state as to what repairs or other corrective measures are needed to bring the boiler into compliance. This section gives DFS rulemaking authority to adopt

forms related written inspection reports. The certificate inspection report must list all violations of the State Boiler Code and any conditions that may adversely affect the operation of the boiler. The bill authorizes the agency responsible for conducting inspections to conduct follow up inspections, not more than every six months, for previously identified code violations until correction of the violation. The inspector must indicate on the report if correction of the code violation has occurred.

If a chief boiler inspector determines a boiler cannot be safely operated, the boiler is deemed an imminent danger to the health, safety and welfare of the public and is immediately shut down. The chief boiler inspector shall attach a tag to the boiler indicating the boiler has been shut down due to unsafe conditions. The boiler must remain shut down until such time as the chief boiler inspector or deputy boiler inspector determines it may be safely operated. The DFS may adopt rules necessary to administer this section.

Section 10 creates s. 554.1081, F.S. This section provides for boiler inspections by insurance companies and local governmental agencies. This section authorizes an insurance company insuring a boiler located in a public assembly location to inspect or contract with an authorized inspection agency the insured boiler. The insurance company must file annual reports providing the name of any authorized inspection agency performing any required boiler inspections on its behalf to the DFS. The insurance company shall actively monitor insured boilers to ensure that inspections are conducted as required by this chapter.

This section allows any county, municipality, town or other governmental subdivision to inspect boilers if it has adopted into law the Boiler and Pressure Vessel Code of the ASME and the National Board Inspection Code for the construction, installation, inspection, maintenance, and repair of boilers to regulate boilers in public assembly locations. These inspections must be conducted by special boiler inspectors in accordance with this chapter.

Section 11 amends s. 554.109, F.S., to strike provisions relating to inspections by insurers or local governments because those provisions are in the newly created s. 554.1081, F.S. The bill also strikes unnecessary provisions related to water supply boilers and water heaters.

Section 12 amends s. 554.1101, F.S., to require boiler insurance companies to notify the chief boiler inspector within 30 days after the issuance of a new or renewal boiler and machinery insurance policy, or the cancellation or nonrenewal of a boiler and machinery insurance policy.

Section 13 amends s. 554.111, F.S., relating to fees paid to the DFS for certification inspections, applications, and examinations. The bill requires that an application for a boiler permit include the certificate inspection fee. Currently, collection of the fee is after the inspection. The bill does not raise any of the current fees.

Section 14 repeals ss. 554.114 and 554.113, Florida Statutes. This section removes the requirement for certification examination by the DFS, as inspectors are required to take an examination conducted by the National Board of Boiler and Pressure Vessel Inspectors.¹³

¹³ The Department of Financial Services, *Senate Bill 986 Fiscal Analysis* (on file with the Senate Appropriations Subcommittee on General Government).

Section 15 amends s. 554.114, F.S., to remove criminal penalties for violations of the Act. Current law provides that specified violations are a second-degree misdemeanor. This bill provides for administrative fines of \$10 per day for the first 10 days of noncompliance, \$50 per day for the next 20 days of noncompliance, and \$100 per day for subsequent days. Violations that can lead to financial penalties are:

- Operating a boiler without a valid certificate;
- Using a certificate for any boiler other than the boiler for which it was intended; and
- Inspecting a boiler without holding a valid certificate.

The bill also provides penalties if boiler insurance companies or authorized inspection agencies fail to comply with inspection requirements.

Section 16 makes conforming changes to s. 554.115, F.S.

Section 17 creates s. 554.1151, F.S., to give the DFS discretion to impose administrative fines in lieu of or in addition to revocation or suspension of certificates in s. 554.115, F.S. Fine amounts are up to \$500 for non-willful violations and up to \$3,500 for willful violations. It provides for suspension or revocation if payment of fines is not within 30 or 90 days.

Under current law, the punishment for failure to have a valid Certificate of Operation for an operating boiler is a second degree misdemeanor and requires notification to the chief inspector and the appropriate State Attorney. Oftentimes the State Attorney declines prosecution of these violations due to heavy caseloads within the circuit.¹⁴

Regulation of Insurance Agents and Adjusters

Sections 19 and 25 amend ss. 626.015 and 626.2815, F.S., respectively, relating to continuing education requirements for licensees. The bill provides that “active participants” in “associations” may receive two hours of continuing education credit each calendar year. The bill defines “active participants” as a member who attends four or more hours of association activities each year. It defines “association” to include:

- Florida Association of Insurance Agents (FAIA);
- National Association of Insurance and Financial Advisors (NAIFA);
- Florida Association of Health Underwriters (FAHU);
- Latin American Association of Insurance Agencies (LAAIA);
- Florida Association of Public Insurance Adjusters (FAPIA);
- Florida Bail Agents Association (FBAA); or
- Professional Bail Agents of the United States (PBUS).

Section 20 amends s. 626.207, F.S. Current law provides that persons with certain criminal convictions¹⁵ are barred from applying for licensure for licenses regulated under ch. 626, F.S.,

¹⁴ *Id.*

¹⁵ When “conviction” is used when discussing DFS agent and agency regulatory statutes in this bill analysis, it means a conviction or the entry of guilty or nolo contendere plea regardless of whether adjudication was withheld.

for specified periods of time.¹⁶ The bill allows such persons to apply for licensure but provides that such persons are barred from licensure.

The time a person is barred from applying for licensure begins to run upon completion of the criminal sentence including the payment of all fines, restitution, and court costs.¹⁷ This provides that the time begins to run upon completion of an applicant's criminal sentence (including the end of any period of probation or community control) and provides that a license cannot be issued until all fines, restitution, and court costs are paid. This will allow applicants who pay their restitution during, for example, a period of probation, to be licensed sooner.

In *Kauk v. Department of Financial Services*,¹⁸ the court considered whether the *per se* bar in s. 626.207, F.S., applied to someone who had had his civil rights restored through executive clemency. The court held that the DFS could not impose a bar against Kauk because Kauk had had his civil restored and a hearing officer had found Kauk to be a "citizen fully rehabilitated."¹⁹ This bill codifies the result of *Kauk*. It provides that the time bars in s. 626.207, F.S., do not apply to someone who has had his civil rights restored or has been issued a pardon. The bill does not require the DFS to issue a license if a person has been granted a pardon or had his or her civil rights restored. Rather, it provides the DFS cannot consider the finding of guilt or entry of the plea for which clemency was granted as grounds to deny the application. **Section 24** makes similar changes to the law relating to health insurance navigators in s. 626.9954, F.S., so that the same disqualifying periods and clemency rules will apply to insurance agents and to navigators.

Section 626.611, F.S., provides grounds for which the DFS must deny an application for licensure or appointment and grounds for which it must suspend or revoke an existing license or appointment. Section 626.621, F.S., provides grounds for which the DFS may refuse to issue a license or appointment, or may suspend or revoke an existing license or appointment. These sections apply to applicants for licensure or license renewal, agents, adjusters, customer representatives, service representatives, and managing general agents. Section 626.611, F.S., currently requires a suspension or revocation for convictions of felonies involving moral turpitude.

Section 21 amends s. 626.221, F.S., to provide that an applicant for an all-lines adjuster license who holds the Universal Claim Certification from the Claims and Litigation Management Alliance is exempt from the examination requirements.

Section 22 amends s. 626.2815, to provide that any part of the Claims and Litigation Management (CLM) Universal Claims Certification (UCC) professional designation can provide up to 19 hours of elective continuing education and 5 hours of the update course required of agents and adjusters.

¹⁶ Persons and entities licensed by the DFS include agents, agencies, adjusters, adjusting firms, customer representatives, or managing general agents.

¹⁷ Section 626.207(6), F.S.

¹⁸ 131 So.3d 805 (Fla. 1st DCA 2014).

¹⁹ 131 So.3d at 808.

Section 23 amends s. 626.8734, F.S., to provide that an applicant holding the Universal Claims Certification (UCC) from the Claims and Litigation Management Alliance (CLM) is exempt from the examination requirements to become a nonresident all-lines adjuster.

Section 26 amends s. 626.611, F.S., to require suspension or revocation for all felonies. This section also removes the moral turpitude provision in s. 626.611(n), F.S.

Section 27 amends s. 626.621, F.S., to provide that license denial, license revocation, or suspension is discretionary with the DFS if a state agency, court, other state, any nation, or possession or district of the United States takes regulatory action against a license to practice a regulated profession or business.

Sections 28 and 29 amend s. 626.7845, F.S., and s. 626.8305, F.S., respectively, to allow trustees to advise persons, settlors, or beneficiaries regarding their interests in a trust regarding life or health insurance plans.

Section 30 amends s. 626.861, F.S., to allow a regular employee of a property insurer handling claims to adjust claims with respect to residential property insurance when the sublimit coverage does not exceed \$500.

Holocaust Victims

Section 626.9543, F.S., provides that any insurer doing business in this state, in receipt of a claim from a Holocaust victim or from a beneficiary, descendant, or heir of a Holocaust victim, must:

- Diligently and expeditiously investigate all such claims;
- Allow such claimants to meet a reasonable, not unduly restrictive, standard of proof to substantiate a claim, pursuant to standards established by the DFS; and
- Permit claims irrespective of any statute of limitations or notice requirements imposed by any insurance policy issued, provided submission of the claim is on or before July 1, 2018.

Section 31 amends s. 626.9543 to remove the July 1, 2018, claims deadline.

The bill provides that actions brought by Holocaust victims or by a beneficiary, heir, or a descendant of a Holocaust victim seeking proceeds of an insurance policy issued or in effect between 1920 and 1945, inclusive, may not be dismissed for failure to comply with the statute of limitations or laches. Current law provides that such action must commence on or before July 1, 2018.

This section authorizes the DFS to continue to assist the approximate 12,500 existing Holocaust victims in filing potential and actual insurance claims.²⁰

²⁰ Department of Financial Regulation, *Senate Bill 986 Fiscal Analysis* (on file with the Senate Appropriations Subcommittee on General Government).

Notice of Actions against the State

Section 33 amends s. 768.28, F.S. Section 768.28, F.S., is the state's waiver of sovereign immunity. Under current law, s. 768.21(6)(a), F.S., provides that an action cannot be initiated against the state or one of its agencies or subdivisions unless a claimant presents the claim in writing to the appropriate agency and to the DFS. A claimant does not have to provide notice to the DFS if the claim is against a municipality or the Florida Space Authority. DFS reports that it receives many notices when claimants make claims against counties. The DFS Division of Risk Management is not involved in claims against counties so the DFS believes it is not necessary that DFS receive the notice. The bill provides that a claimant does not have to present notice to the DFS if the claim is against a county.

Similarly, s. 768.21(7), F.S., requires service of process on DFS unless the case is brought pursuant to s. 768.28, F.S., process must be served on the agency head and DFS except for cases where the defendant is a municipality or the Florida Space Authority. The bill provides that service is not required on the DFS if the defendant is a county. The DFS' Division of Risk Management could reallocate resources expended to process in excess of 7,500 subdivision notices per year, which fall outside the coverage provided by the Risk Management Insurance Trust Fund.²¹

Miscellaneous Provisions

Section 18 of this bill amends s. 624.307, F.S., to provide authority to specific divisions²² within the DFS to expend funds, subject to availability, for professional development of staff. The bill does not provide an appropriation.

Currently, The Office of Insurance Regulation may expend funds, subject to availability, for the professional development of its staff. Expenditures may include dues for professional organizations, fees for examinations leading to professional designations, and relevant training courses.

Section 32 amends s. 633.516, F.S., relating to occupational disease studies of firefighter or persons in other fire-related fields. The bill provides that the DFS may share, under controlled or secure circumstances, confidential information, including a social security number, with the contracted entity for the study.²³

Section 34 amends s. 288.706, F.S., to change statutory citations to conform to changes made in Section 2 of the bill.

Sections 35 and 36 amend ss. 626.7315 and 627.351, F.S., to change statutory citations to conform to the changes made in Section 19 of the bill.

Section 37 provides an effective date of July 1, 2017.

²¹ *Id.*

²² *Id.* DFS identifies these divisions as Division of Insurance Agent & Agency Services, Consumer Services, and Rehabilitation and Liquidation and the Office of the Insurance Consumer.

²³ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The impact on the private sector from changes to the Boiler Safety Act is indeterminate.

C. Government Sector Impact:

The overall impact of this bill is indeterminate on state revenues and expenditures. The changes to the Boiler Safety Act may have an indeterminate fiscal impact on the DFS.²⁴ The DFS may see a slight increase in revenue if the levy of fines occur against boiler owners who fail to correct compliance issues. The DFS may have additional expenses (relating to professional development of DFS staff) and workload (relating to agreements involving state or federal financial assistance), but these additional costs will be absorbed within current resources.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 17.575, 215.422, 554.1021, 554.103, 554.104, 554.105, 554.106, 554.107, 554.108, 554.109, 554.1101, 554.111, 554.114, 554.115, 624.307, 626.015, 626.207, 626.221, 626.2815, 626.8734, 626.9954,

²⁴ *Id.*

²⁵ *Id.*

626.2815, 626.611, 626.621, 626.7845, 626.8305, 626.861, 626.8734, 626.9543, 633.516, 768.28, 288.706, 626.7315, and 627.351.

This bill creates the following sections of the Florida Statutes: 554.1081 and 554.1151.

This bill repeals the following sections of the Florida Statutes: 554.112 and 554.113.

IX. Additional Information:

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

CS/CS by Appropriations on April 20, 2017:

The CS amends the definition of “authorized inspection agency” to require an agency to maintain financial security adequate to indemnify the owner of the boiler if the agency’s negligence or failure to inspect results in a loss. The CS removes a requirement that an insurer remit a fee when it inspects a boiler. It changes the time for reinspection certain boilers from four to six months. The CS provides insurers will not be penalized for failure to inspect if the failure was caused by certain acts of the boiler owner. It removes a provision requiring annual reports by insurers to the chief boiler inspector.

CS by Banking and Insurance on March 14, 2017:

The CS provides that claimants instituting civil actions against counties do not have to give notice to or serve the DFS. It also provides that some of the boiler installation requirements created by the bill are not effective until January 1, 2018.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Stargel

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1 A bill to be entitled
 2 An act relating to the Department of Financial
 3 Services; amending s. 17.575, F.S.; replacing, within
 4 the Division of Treasury, the Treasury Investment
 5 Committee with the Treasury Investment Council;
 6 specifying the composition and term length of members;
 7 specifying duties of the council; providing that
 8 members shall serve without additional compensation or
 9 honorarium but may receive per diem and travel expense
 10 reimbursement; amending s. 215.422, F.S.; providing
 11 applicability of certain requirements relating to
 12 payments, warrants, and invoices to payments made in
 13 relation to certain agreements funded with federal or
 14 state assistance; reordering and amending s. 554.1021,
 15 F.S.; defining and redefining terms; amending s.
 16 554.103, F.S.; requiring, rather than authorizing, the
 17 Department of Financial Services to adopt amendments
 18 and interpretations of a specified code into the State
 19 Boiler Code; revising requirements that installers,
 20 rather than owners, must comply with before installing
 21 a boiler that is placed in use after a specified date;
 22 authorizing the department to adopt rules; conforming
 23 provisions to changes made by the act; amending s.
 24 554.104, F.S.; deleting a provision relating to
 25 boilers of special design which is recreated in s.
 26 554.103, F.S.; requiring certification of boiler
 27 inspectors; requiring an application for a
 28 certification examination; specifying qualifications
 29 and requirements for the certification examination;

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30 requiring the department to adopt a specified training
 31 course; providing authorized methods and requirements
 32 for the training course; requiring the chief boiler
 33 inspector to issue a certificate of competency to a
 34 person meeting certain requirements; providing
 35 procedures for renewing a certificate; authorizing the
 36 department to adopt rules; amending s. 554.105, F.S.;
 37 renaming the chief inspector as the chief boiler
 38 inspector; revising requirements for the department
 39 through the state boiler inspection program; amending
 40 s. 554.106, F.S.; renaming deputy inspectors as deputy
 41 boiler inspectors; specifying required and authorized
 42 duties of deputy boiler inspectors; amending s.
 43 554.107, F.S.; renaming special inspectors as special
 44 boiler inspectors; revising entities that may employ
 45 special boiler inspectors; specifying required
 46 inspection intervals for special boiler inspectors;
 47 amending s. 554.108, F.S.; providing an exemption,
 48 under certain conditions, from inspection
 49 requirements; specifying duties of an owner or an
 50 owner's designee to allow an inspector to conduct
 51 inspections; specifying requirements for boiler
 52 inspections and inspection reports; providing a
 53 penalty against an insurance carrier if certain
 54 followup inspections are not conducted; revising
 55 conditions that require a boiler to be shut down;
 56 revising requirements and procedures for a boiler that
 57 must be shut down; providing construction; authorizing
 58 the department to adopt rules; creating s. 554.1081,

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59 F.S.; revising requirements for boiler inspections by
 60 insurance companies and local governmental agencies;
 61 amending s. 554.109, F.S.; conforming provisions to
 62 changes made by the act; revising boilers that are
 63 exempt from regulation under the chapter; revising
 64 requirements for certain exempt boilers and water
 65 heaters; amending s. 554.1101, F.S.; conforming
 66 provisions to changes made by the act; requiring a
 67 boiler insurance company to notify, within a specified
 68 timeframe, the chief boiler inspector under certain
 69 circumstances; requiring a certificateholder to submit
 70 a certain certificate of insurance to the chief boiler
 71 inspector under certain circumstances; amending s.
 72 554.111, F.S.; requiring an application for a boiler
 73 permit to include a specified fee; requiring the chief
 74 boiler inspector to deposit fines into a specified
 75 trust fund; conforming provisions to changes made by
 76 the act; repealing ss. 554.112 and 554.113, F.S.,
 77 relating to examinations, and certification of
 78 inspectors and renewals, respectively; amending s.
 79 554.114, F.S.; revising prohibited acts; providing
 80 penalties for a boiler insurance company or authorized
 81 inspection agency that fails to conduct certain
 82 inspections; conforming provisions to changes made by
 83 the act; amending s. 554.115, F.S.; adding authorized
 84 disciplinary actions for the department; adding
 85 specified grounds for disciplinary action against an
 86 owner of a boiler; revising grounds for disciplinary
 87 action against a boiler inspector; deleting a

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88 provision requiring a chief inspector to report
 89 certain persons to the state attorney; deleting a
 90 provision authorizing certain administrative action by
 91 the chief inspector; deleting a provision relating to
 92 the duration of a suspended certificate of compliance;
 93 creating s. 554.1151, F.S.; authorizing the department
 94 to impose specified administrative fines in lieu of or
 95 in addition to certain disciplinary actions;
 96 authorizing procedures for payment of fines by a
 97 certificateholder; requiring a certificate to be
 98 revoked under certain circumstances; creating s.
 99 554.116, F.S.; requiring a boiler insurance company to
 100 annually file a specified report with the chief boiler
 101 inspector; requiring the department to adopt a form by
 102 rule; amending s. 624.307, F.S.; authorizing the
 103 department to expend funds for professional
 104 development of its employees; amending s. 626.015,
 105 F.S.; defining terms; conforming a cross-reference;
 106 amending s. 626.207, F.S.; defining the term
 107 "applicant"; revising a list of felonies subject to a
 108 permanent bar from licensure; revising a condition for
 109 when certain disqualifying periods begin; conforming
 110 cross-references; providing an exception from a
 111 permanent bar on or disqualifying periods for cases of
 112 executive clemency; providing construction; amending
 113 s. 626.9954, F.S.; revising a list of felonies subject
 114 to a permanent bar from licensure; revising conditions
 115 for when certain disqualifying periods begin;
 116 conforming cross-references; providing an exception

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117 from a permanent bar on or disqualifying periods for
 118 cases of executive clemency; providing construction;
 119 amending s. 626.2815, F.S.; authorizing the department
 120 to approve a certain number of elective continuing
 121 education credits for certain insurance licensees;
 122 providing an exception from a certain continuing
 123 education requirement for such licensees; amending s.
 124 626.611, F.S.; deleting a condition for the
 125 involvement of moral turpitude in felonies or certain
 126 crimes in relation to compulsory disciplinary actions
 127 by the department against certain entities' licenses
 128 or appointments; conforming a cross-reference;
 129 amending s. 626.621, F.S.; revising grounds for the
 130 department's discretionary refusal, suspension, or
 131 revocation of the license or appointment of certain
 132 persons; amending s. 626.7845, F.S.; revising an
 133 exception to the prohibition against the unlicensed
 134 transaction of life insurance; conforming a cross-
 135 reference; amending s. 626.8305, F.S.; revising an
 136 exception to the prohibition against the unlicensed
 137 transaction of health insurance; conforming a cross-
 138 reference; amending s. 626.861, F.S.; authorizing
 139 certain insurer employees to adjust specified claim
 140 losses or damage; amending s. 626.9543, F.S.; removing
 141 the scheduled expiration of a requirement for insurers
 142 to permit claims from a Holocaust victim or certain
 143 related persons irrespective of certain conditions;
 144 removing the scheduled expiration of an exception from
 145 statutes of limitations or laches for certain actions

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146 brought by Holocaust victims or certain related
 147 persons; amending s. 633.516, F.S.; authorizing the
 148 Division of State Fire Marshal within the division to
 149 contract for studies of, rather than to make a
 150 continuous study of, occupational diseases of
 151 firefighters; adding persons in other fire-related
 152 fields to such studies; authorizing the division to
 153 release confidential information of an individual
 154 firefighter or a person in another fire-related field
 155 to certain parties under certain circumstances;
 156 amending s. 768.28, F.S.; providing exceptions in tort
 157 claims against a county from requirements that a
 158 claimant present the written claim to the department
 159 within a specified timeframe and serve process upon
 160 the department; amending ss. 288.706, 626.7315, and
 161 627.351, F.S.; conforming cross-references; providing
 162 an effective date.

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

165
 166 Section 1. Section 17.575, Florida Statutes, is amended to
 167 read:

168 17.575 Administration of funds; Treasury Investment Council
 169 ~~Committee~~.-

170 (1) There is created a Treasury Investment Council
 171 ~~Committee~~ within the Division of Treasury consisting of at least
 172 five members, at least three of whom are professionals from the
 173 private sector, who must possess special knowledge, experience,
 174 and familiarity in finance, investments, or accounting. The

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175 members of the council ~~must committee shall~~ be appointed by and
 176 serve at the pleasure of the Chief Financial Officer. Each
 177 member shall serve a term of 4 years from the date of
 178 appointment. The council committee shall annually elect a chair
 179 and vice chair from among its ~~members~~ membership.

180 (2) The council shall review the investments required by s.
 181 17.57; meet with staff of the Division of Treasury at least
 182 biannually; and provide recommendations to the Division of
 183 Treasury and the Chief Financial Officer regarding investment
 184 policy, strategy, and procedures ~~The committee shall administer~~
 185 ~~the Treasury Investment Program consistent with policies~~
 186 ~~approved by the Chief Financial Officer for deposits and~~
 187 ~~investments of public funds. The committee shall also make~~
 188 ~~recommendations regarding investment policy to the Chief~~
 189 ~~Financial Officer.~~

190 (3) Members of the council shall serve without additional
 191 compensation or honorarium, but may receive per diem and
 192 reimbursement for travel expenses as provided in s. 112.061 ~~The~~
 193 ~~committee shall submit an annual report outlining its activities~~
 194 ~~and recommendations to the Chief Financial Officer and the Joint~~
 195 ~~Legislative Auditing Committee. The report shall be submitted on~~
 196 ~~August 15, 2009, and annually thereafter.~~

197 Section 2. Present subsections (14) through (16) of section
 198 215.422, Florida Statutes, are redesignated as subsections (15)
 199 through (17), respectively, and a new subsection (14) is added
 200 to that section, to read:

201 215.422 Payments, warrants, and invoices; processing time
 202 limits; dispute resolution; agency or judicial branch
 203 compliance.-

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204 (14) All requirements set forth in this section apply to
 205 payments made in accordance with s. 215.971.

206 Section 3. Section 554.1021, Florida Statutes, is reordered
 207 and amended to read:

208 554.1021 Definitions.-As used in this chapter, the term ~~ss.~~
 209 ~~554.1011-554.115:~~

210 (3)(1) "Boiler" means a closed vessel in which water or
 211 other liquid is heated, steam or vapor is generated, steam is
 212 superheated, or any combination of these functions is
 213 accomplished, under pressure or vacuum, for use external to
 214 itself, by the direct application of energy from the combustion
 215 of fuels or from electricity or solar energy. The term "boiler"
 216 includes fired units for heating or vaporizing liquids other
 217 than water where these units are separate from processing
 218 systems and are complete within themselves. The varieties of
 219 boilers are as follows:

220 (f)(a) "Power boiler" means a boiler in which steam or
 221 other vapor is generated at a pressure of more than 15 psig.

222 (b) "High pressure, high temperature water boiler" means a
 223 water boiler operating at pressures exceeding 160 psig or
 224 temperatures exceeding 250 °F.

225 (a)(e) "Heating boiler" means a steam or vapor boiler
 226 operating at pressures not exceeding 15 psig, or a hot water
 227 boiler operating at pressures not exceeding 160 psig or
 228 temperatures not exceeding 250 °F.

229 (c)(d) "Hot water supply boiler" means a boiler or a lined
 230 storage water heater supplying heated water for use external to
 231 itself operating at a pressure not exceeding 160 psig or
 232 temperature not exceeding 250 °F.

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233 (g)(e) "Secondhand boiler" means a boiler that has changed
 234 ownership and location subsequent to its original installation
 235 and use.

236 (d) "Inservice boiler" means a boiler placed in use after
 237 test firing and required inspections have been satisfactorily
 238 completed.

239 (e) "Operating boiler" means a boiler connected and ready
 240 for use.

241 (h) "Secured boiler" means a boiler that has been:

242 1. Physically disconnected from the system, including
 243 disconnection from fuel, water, steam, electricity, and stack;
 244 or

245 2. Locked out and tagged out in accordance with the
 246 Occupational Safety and Health Administration's standard
 247 relating to the control of hazardous energy and lockout or
 248 tagout in 29 C.F.R. s. 1910.147, as adopted by rule of the
 249 department.

250 (9)(2) "Public assembly locations" includes ~~include~~
 251 schools, day care centers, community centers, churches,
 252 theaters, hospitals, nursing and convalescent homes, stadiums,
 253 amusement parks, and other locations open to the general public.

254 (5)(3) "Certificate inspection" means an inspection whose
 255 ~~the report of which~~ is used by the chief boiler inspector to
 256 determine whether or not a certificate of operation may be
 257 issued.

258 (7)(4) "Certificate of operation compliance" means a
 259 document issued to the owner of a boiler which authorizes the
 260 owner to operate the boiler, subject to any restrictions
 261 endorsed thereon.

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262 (6)(5) "Certificate of competency" means a document issued
 263 to a person who has satisfied the minimum competency
 264 requirements for boiler inspectors under this chapter ~~ss.~~
 265 ~~554.1011-554.115.~~

266 (8)(6) "Department" means the Department of Financial
 267 Services.

268 (1)(7) "A.S.M.E." means the American Society of Mechanical
 269 Engineers.

270 (2) "Authorized inspection agency" means:

271 (a) Any county, municipality, town, or other governmental
 272 subdivision that has adopted into law the Boiler and Pressure
 273 Vessel Code of the A.S.M.E. and the National Board Inspection
 274 Code for the construction, installation, inspection,
 275 maintenance, and repair of boilers to regulate boilers in public
 276 assembly locations, and whose boiler inspectors hold valid
 277 certificates of competency in accordance with s. 554.104;

278 (b) An insurer authorized by a subsisting certificate of
 279 authority, issued by the Office of Insurance Regulation, to
 280 transact boiler and machinery insurance in this state, and whose
 281 boiler inspectors hold valid certificates of competency in
 282 accordance with s. 554.104; or

283 (c) An inspecting agency accredited in accordance with The
 284 National Board of Boiler and Pressure Vessel Inspector's program
 285 entitled "Accreditation of Authorized Inspection Agencies (AIA)
 286 Performing Inservice or Repair/Alteration Inspection
 287 Activities," document number NB-369, and whose boiler inspectors
 288 hold valid certificates of competency in accordance with s.
 289 554.104.

290 (4) "Boiler insurance company" means a company authorized

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291 by a subsisting certificate of authority, issued by the Office
 292 of Insurance Regulation, to transact boiler and machinery
 293 insurance in this state.

294 Section 4. Section 554.103, Florida Statutes, is amended to
 295 read:

296 554.103 Boiler code.—The department shall adopt by rule a
 297 State Boiler Code for the safe construction, installation,
 298 inspection, maintenance, and repair of boilers in this state.
 299 The rules adopted shall be based upon and shall at all times
 300 follow generally accepted nationwide engineering standards,
 301 formulas, and practices pertaining to boiler construction and
 302 safety.

303 (1) The department shall adopt an existing code for new
 304 construction and installation known as the Boiler and Pressure
 305 Vessel Code of the American Society of Mechanical Engineers,
 306 including all amendments and interpretations ~~approved thereto by~~
 307 ~~the Council on Codes and Standards of A.S.M.E.~~ The department
 308 ~~may adopt amendments and interpretations~~ to the A.S.M.E. Boiler
 309 and Pressure Vessel Code approved by the A.S.M.E. Council on
 310 Codes and Standards subsequent to the adoption of the State
 311 Boiler Code, and when so adopted by the department, such
 312 amendments and interpretations ~~shall~~ become a part of the State
 313 Boiler Code.

314 (2) The installer owner of any boiler placed in use in this
 315 state after January 1, 2018, must, before installing the boiler,
 316 apply on a form adopted by rule of the department for a permit
 317 to install the boiler from the chief boiler inspector. The
 318 application must include the boiler's A.S.M.E. manufacturer's
 319 data report and other documents required by the State Boiler

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320 Code before the boiler is placed in service. The installer must
 321 contact the chief boiler inspector to schedule an inspection for
 322 each boiler no later than 7 days before the boiler is placed in
 323 service after October 1, 1987, shall submit the A.S.M.E.
 324 ~~manufacturer's data report on such boiler to the chief inspector~~
 325 ~~not more than 90 days following the inservice date of the~~
 326 ~~boiler.~~

327 (3) The maximum allowable working pressure of a boiler
 328 carrying the A.S.M.E. code symbol must shall be determined by
 329 the applicable sections of the code under which it was
 330 constructed and stamped. Subject to the concurrence of the chief
 331 boiler inspector, such boiler may be rerated in accordance with
 332 the standards of the State Boiler Code.

333 (4) The maximum allowable working pressure of a boiler that
 334 ~~which~~ does not carry the A.S.M.E. code symbol must shall be
 335 computed in accordance with the standards of the State Boiler
 336 Code.

337 (5) This chapter may not ~~Nothing in ss. 554.1011-554.115~~
 338 ~~shall~~ be construed to in any way prevent the use, sale, or
 339 reinstallation of a boiler if such boiler has been made to
 340 conform to the applicable provisions of the State Boiler Code
 341 governing existing installations and if, upon inspection, the
 342 boiler has been found to be in a safe condition.

343 (6) The department, at its discretion, may authorize the
 344 construction, installation, and operation of boilers of special
 345 design or construction which do not meet the specific
 346 requirements of the State Boiler Code, but which are consistent
 347 with the intent of the safety objectives of the code.

348 (7) The department may adopt rules pursuant to ss.

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349 120.536(1) and 120.54 to administer this chapter. Such rules may
 350 include specifying the procedures and forms to be used to obtain
 351 an installation permit, an initial certificate, or a renewal
 352 certificate, and the submission of reports and notices required
 353 under this chapter.

354 Section 5. Section 554.104, Florida Statutes, is amended to
 355 read:

356 554.104 Certification of boiler inspectors required;
 357 application; qualifications; renewal ~~Boilers of special design.~~
 358 ~~The department, at its discretion, may authorize the~~
 359 ~~construction, installation, and operation of boilers of special~~
 360 ~~design or construction that do not meet the specific~~
 361 ~~requirements of the State Boiler Code but are not inconsistent~~
 362 ~~with the intent of the safety objectives of such code.~~

363 (1) CERTIFICATE REQUIRED.—A person may not be, act as, or
 364 advertise or hold himself or herself out to be an inspector of a
 365 boiler that is subject to regulation by this chapter, unless he
 366 or she currently holds a certificate of competency issued by the
 367 department.

368 (2) APPLICATION.—A person who desires to be certified to
 369 inspect boilers that are subject to regulation by this chapter
 370 must apply in writing to the department to take the
 371 certification examination.

372 (3) QUALIFICATIONS.—A person is qualified to take the
 373 certification examination if the person:

374 (a) Has submitted the application for examination together
 375 with the fee required under s. 554.111(1)(a);

376 (b) Is at least 18 years of age;

377 (c) Has completed the 2-hour training course under

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378 subsection (4) on the requirements of this chapter and any
 379 related rules adopted by the department. The course must be
 380 completed no later than 12 months before issuance of an initial
 381 or renewal certificate; and

382 (d) Has:

383 1. At least 3 years of experience in the construction,
 384 installation, inspection, operation, maintenance, or repair of
 385 high pressure, high temperature water boilers; or

386 2. Met the requirements to qualify as a commissioned
 387 inspector by the National Board of Boiler and Pressure Vessel
 388 Inspectors as set forth in NB-263, RCI-1, Rules for Commissioned
 389 Inspectors, as adopted by rule of the department.

390 (4) TRAINING COURSE.—The department shall adopt by rule a
 391 2-hour training course on the requirements of this chapter and
 392 any related rules adopted by the department. The department
 393 shall make the training course available online and may make the
 394 course available in a classroom setting. A boiler insurance
 395 company may include the department's course as part of its in-
 396 house training of a boiler inspector student, in lieu of the
 397 student taking the online training course. A boiler insurance
 398 company that includes the department's course in its in-house
 399 training of a boiler inspector student must indicate that the
 400 student completed the training on an application filed with the
 401 department for certification of competency.

402 (5) EXAMINATION.—A person applying for a certificate of
 403 competency must have successfully passed the examination
 404 administered by the National Board of Boiler and Pressure Vessel
 405 Inspectors and be eligible to obtain a National Board
 406 commission.

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407 (6) ISSUANCE OF CERTIFICATE.—The chief boiler inspector
 408 must issue a certificate of competency to each person who is
 409 qualified under this section and who holds a commission from the
 410 National Board of Boiler and Pressure Vessel Inspectors.

411 (7) RENEWAL OF CERTIFICATE.—A certificate of competency
 412 expires on December 31 of each year and may be renewed upon the
 413 filing of a renewal application with the department. A secured
 414 electronic application must be used, if available on the
 415 department's website.

416 (8) RULES.—The department may adopt rules necessary to
 417 administer this section.

418 Section 6. Section 554.105, Florida Statutes, is amended to
 419 read:

420 554.105 Chief boiler inspector.—

421 (1) The Chief Financial Officer shall appoint a chief
 422 boiler inspector, who must have at least ~~shall have not less~~
 423 ~~than~~ 5 years' experience in the construction, installation,
 424 inspection, operation, maintenance, or repair of high pressure,
 425 high temperature water boilers and who must ~~shall~~ hold a
 426 commission from the National Board of Boiler and Pressure Vessel
 427 Inspectors or a certificate of competency from the department.

428 (2) The department, through the chief boiler inspector,
 429 shall administer the state boiler inspection program, and shall:

430 (a) Take all action necessary to enforce the State Boiler
 431 Code and the rules adopted pursuant to this chapter ~~ss.~~
 432 ~~554.1011-554.115.~~

433 (b) Keep a complete record on all boilers at public
 434 assembly locations. Such record must ~~shall~~ include the name of
 435 each boiler owner or user and the location, type, ~~dimensions,~~

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436 maximum allowable working pressure, age, ~~and~~ last recorded
 437 inspection of each boiler, and any other information necessary
 438 to expedite the certification process.

439 ~~(c) Publish and make available to anyone, upon request,~~
 440 ~~copies of the rules adopted pursuant to ss. 554.1011-554.115.~~

441 ~~(d)~~ Expend funds necessary to meet the expenses authorized
 442 by this chapter ~~ss. 554.1011-554.115~~, including the necessary
 443 travel expenses of the chief boiler inspector and deputy boiler
 444 inspectors, and the expenses incident to the maintenance of this
 445 ~~his or her~~ office.

446 Section 7. Section 554.106, Florida Statutes, is amended to
 447 read:

448 554.106 Deputy boiler inspectors.—

449 (1) The department shall employ deputy boiler inspectors
 450 who shall be responsible to the chief boiler inspector ~~and who~~
 451 ~~shall each hold a certificate of competency from the department.~~

452 (2) A deputy boiler inspector shall perform inspections of
 453 uninsured boilers that are subject to regulation under this
 454 chapter, in accordance with the inspection frequency set forth
 455 in s. 554.108. A deputy boiler inspector may also engage in
 456 public outreach activities of the department and conduct other
 457 duties as assigned by the chief boiler inspector.

458 Section 8. Section 554.107, Florida Statutes, is amended to
 459 read:

460 554.107 Special boiler inspectors.—

461 (1) Upon application by any authorized inspection agency
 462 ~~company licensed to insure boilers in this state~~, the chief
 463 boiler inspector shall issue a certificate of competency as a
 464 special boiler inspector to any inspector employed by the

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465 authorized inspection agency company, if provided that such
 466 boiler inspector satisfies the competency requirements for
 467 inspectors as provided in s. 554.104 ~~s. 554.113~~. Special boiler
 468 inspectors shall perform inspections of insured boilers in
 469 accordance with the inspection frequency set forth in s.
 470 554.108.

471 (2) The certificate of competency of a special boiler
 472 inspector remains ~~shall remain~~ in effect only so long as the
 473 special boiler inspector is employed by an authorized inspection
 474 agency a company licensed to insure boilers in this state. Upon
 475 termination of employment with such company, such company a
 476 special inspector shall, in writing, notify the chief boiler
 477 inspector of such special boiler inspector's termination. Such
 478 notice must ~~shall~~ be given within 15 days following the date of
 479 termination.

480 Section 9. Subsections (1), (2), (4), and (5) of section
 481 554.108, Florida Statutes, are amended, and subsection (6) is
 482 added to that section, to read:

483 554.108 Inspection.—

484 (1) The inspection requirements of this chapter apply only
 485 to boilers located in public assembly locations. A potable hot
 486 water supply boiler with a heat input of 200,000 British thermal
 487 units (Btu) per hour and above, up to a heat input not exceeding
 488 400,000 Btu per hour, is exempt from inspection, but must be
 489 stamped with the A.S.M.E. code symbol "HLW" and the boiler's
 490 A.S.M.E data report must be filed as required under s.
 491 554.103(2) The only boilers required to be inspected under the
 492 provisions of ss. 554.1011-554.115 are boilers located in public
 493 assembly locations.

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494 (2) Each inspection of a boiler conducted pursuant to this
 495 chapter must ~~ss. 554.1011-554.115~~ shall be made by the chief
 496 boiler inspector, a deputy boiler inspector, or a special boiler
 497 inspector. An owner, or the owner's designee, shall perform all
 498 operation, testing, manipulation of boiler controls and safety
 499 devices, removal of lagging, and disassembly of boiler
 500 components to allow the chief boiler inspector, deputy boiler
 501 inspector, or special boiler inspector to conduct inspections as
 502 required by this section.

503 (4) Each boiler subject to inspection must be inspected
 504 within 30 days after expiration of the boiler's certificate of
 505 operation. However, an inspection report must be received by the
 506 chief boiler inspector no later than 30 days after the projected
 507 expiration date of the certificate of operation. If, upon
 508 inspection, the chief boiler inspector, deputy boiler inspector,
 509 or special boiler inspector finds that a boiler is in violation
 510 of any provision of the State Boiler Code, the inspector must
 511 promptly notify the owner or user and state what repairs or
 512 other corrective measures are needed. Deputy boiler inspectors
 513 and special boiler inspectors shall file a written report, on a
 514 form adopted by rule of the department, on each certificate
 515 inspection with the chief boiler inspector within 15 days after
 516 the following such inspection. A certificate inspection report
 517 must list all violations of the State Boiler Code and any
 518 conditions that may adversely affect the operation of the
 519 boiler. A certificate inspection report filed by a special
 520 boiler inspector must include the fee for issuance of a
 521 certificate of operation as provided in s. 554.111(1)(c). The
 522 filing of reports of inspections, other than statutorily

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523 ~~required certificate~~ inspections, ~~is are~~ not required unless
 524 such inspections disclose that a boiler is in an unsafe
 525 condition. However, an inspection report must be filed for any
 526 inspection performed on a boiler with a previously identified
 527 code violation. The report must indicate whether the violation
 528 has been corrected. The agency responsible for conducting the
 529 inspection must perform followup inspections, not more than
 530 every 4 months, of a previously identified code violation until
 531 it is corrected. Failure to conduct such followup inspections
 532 subjects the insurance carrier to the penalties provided in s.
 533 554.114(4).

534 (5) Upon a determination by the chief boiler inspector
 535 determining that a boiler cannot be safely operated, is in an
 536 unsafe condition and poses an imminent danger to the public
 537 health, safety, and welfare, the chief inspector, a deputy
 538 inspector, or a special inspector may immediately order the
 539 boiler must immediately to be shut down. The chief boiler
 540 inspector or a deputy boiler inspector shall attach a tag to the
 541 boiler indicating that the boiler has been shut down due to an
 542 unsafe condition. The boiler must shall remain shut down until a
 543 reinspection by the chief boiler inspector or a deputy boiler a
 544 certified inspector determines that all violations have been
 545 corrected, that the boiler may be operated safely, and that a
 546 certificate of compliance has been issued. A boiler that may not
 547 be safely operated, as determined by the chief boiler inspector,
 548 is deemed to constitute an imminent danger to the public health,
 549 safety, and welfare.

550 (6) The department may adopt rules necessary to administer
 551 this section.

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552 Section 10. Section 554.1081, Florida Statutes, is created
 553 to read:

554 554.1081 Boiler inspections by insurance companies and
 555 local governmental agencies.—

556 (1) An insurance company insuring a boiler located in a
 557 public assembly location in this state shall inspect, or shall
 558 contract with an authorized inspection agency to inspect, the
 559 insured boiler. A boiler insurance company shall annually report
 560 to the department the name of any authorized inspection agency
 561 performing any required boiler inspections on its behalf and
 562 shall actively monitor insured boilers to ensure that
 563 inspections are conducted as required by this chapter.

564 (2) A county, municipality, town, or other governmental
 565 subdivision that has adopted into law the Boiler and Pressure
 566 Vessel Code of the A.S.M.E. and the National Board Inspection
 567 Code for the construction, installation, inspection,
 568 maintenance, and repair of boilers to regulate boilers in public
 569 assembly locations may inspect such boilers. All boiler
 570 inspections must be conducted by special boiler inspectors in
 571 accordance with this chapter.

572 Section 11. Section 554.109, Florida Statutes, is amended
 573 to read:

574 554.109 Exemptions.—

575 ~~(1) Any insurance company insuring a boiler located in a~~
 576 ~~public assembly location in this state shall inspect such boiler~~
 577 ~~so insured, and any county, city, town, or other governmental~~
 578 ~~subdivision which has adopted into law the Boiler and Pressure~~
 579 ~~Vessel Code of the American Society of Mechanical Engineers and~~
 580 ~~the National Board Inspection Code for the construction,~~

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581 ~~installation, inspection, maintenance, and repair of boilers,~~
 582 ~~regulating such boilers in public assembly locations, shall~~
 583 ~~inspect such boilers so regulated; provided that such inspection~~
 584 ~~shall be conducted by a special inspector licensed pursuant to~~
 585 ~~ss. 554.1011-554.115. Upon filing of a report of satisfactory~~
 586 ~~inspection with the department, such boiler is exempt from~~
 587 ~~inspection by the department.~~

588 ~~(2) The provisions of This chapter does shall not apply to~~
 589 ~~potable hot water supply boilers or lined storage water heaters~~
 590 ~~that which are directly fired with oil, gas, electricity, or~~
 591 ~~solar energy, provided that none of the following limitations is~~
 592 ~~are exceeded:~~

593 ~~(1)(a)~~ Heat input of 400,000 Btu per hour.

594 ~~(2)(b)~~ Water temperature of 210 degrees Fahrenheit.

595 ~~(3)(c)~~ Nominal water-containing capacity of 120 gallons.

596 ~~These exempt hot water supply boilers and lined storage water~~
 597 ~~heaters shall be equipped with safety relief valves conforming~~
 598 ~~to the requirements of the Boiler and Pressure Vessel Code of~~
 599 ~~the American Society of Mechanical Engineers and of the National~~
 600 ~~Board Inspection Code.~~

602 Section 12. Section 554.1101, Florida Statutes, is amended
 603 to read:

604 554.1101 Certificate of operation ~~compliance~~.-

605 (1) If an inspection report filed pursuant to s. 554.108
 606 shows a boiler to be in compliance with all applicable
 607 provisions of the State Boiler Code, the chief boiler inspector
 608 ~~must shall~~, upon receipt of the inspection fee, issue a
 609 certificate of operation ~~compliance~~ to the owner. Such

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610 certificate must ~~shall~~ bear the date of the inspection and
 611 specify the maximum pressure at which the boiler may be
 612 operated.

613 (2) The certificate for a power boiler or a high pressure,
 614 high temperature water boiler is valid for a period of 12 months
 615 from the date of the certificate inspection. The certificate for
 616 a heating boiler or a hot water supply boiler is valid for a
 617 period of 24 months from the date of the certificate inspection.
 618 The certificate must ~~shall~~ be posted under glass, or be
 619 similarly protected, in the room containing the boiler.

620 (3) A boiler insurance company shall notify the chief
 621 boiler inspector within 30 days after the issuance of a new or
 622 renewal boiler and machinery insurance policy, or the
 623 cancellation or nonrenewal of a boiler and machinery insurance
 624 policy, covering places of public assembly in this state.

625 (4) If the chief boiler inspector has knowledge that a
 626 boiler regulated under this chapter was covered by a boiler and
 627 machinery insurance policy after its most recent certification
 628 inspection, the certificateholder must, upon the request of the
 629 chief boiler inspector, submit its certificate of boiler and
 630 machinery insurance for the boiler if the department has not
 631 received the special boiler inspector's annual inspection report
 632 within 30 days after its due date.

633 Section 13. Section 554.111, Florida Statutes, is amended
 634 to read:

635 554.111 Fees.-

636 (1) The department shall charge the following fees:

637 (a) For an applicant for a certificate of competency, the
 638 initial application fee shall be \$50, and the annual renewal fee

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639 shall be \$30. The fee for examination shall be \$50.

640 (b) For certificate inspections conducted by the

641 department:

642 1. For power boilers and high pressure, high temperature

643 water boilers of:

644 4,000 square feet or less heating surface.....\$60

645 More than 4,000 square feet heating surface and less than 10,000

646 square feet of heating surface.....\$70

647 10,000 square feet or more heating surface.....\$90

648 2. For heating boilers:

649 Without a manhole.....\$40

650 With a manhole.....\$70

651 3. For hot water supply boilers.....\$40

652 (c) For issuance of a compliance certificate of operation

653 without a department inspection.....\$30

654 (d) Duplicate certificates or address

655 changes.....\$5

656 (e) An application for a boiler permit must include the

657 applicable certificate inspection fee provided in paragraph (b).

658 (2) Not more than an amount equal to one certificate

659 inspection fee may shall be charged or collected for any and all

660 boiler inspections in any inspection period, except as otherwise

661 provided in this chapter ss. 554.1011-554.115.

662 (a) When it is necessary to make a special trip to observe

663 the application of a hydrostatic test, an additional fee equal

664 to the fee for a certificate inspection of the boiler must shall

665 be charged.

666 (b) All other inspections, including shop inspections,

667 surveys, and inspections of secondhand boilers made by the chief

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668 boiler inspector or a deputy boiler inspector, must shall be

669 charged at the rate of not less than \$270 for one-half day of 4

670 hours, and \$500 for 1 full day of 8 hours, plus travel, hotel,

671 and incidental expenses in accordance with chapter 112.

672 (3) The chief boiler inspector shall deposit all fees or

673 finer received pursuant to this chapter ss. 554.1011-554.115

674 into the Insurance Regulatory Trust Fund.

675 Section 14. Sections 554.112 and 554.113, Florida Statutes,

676 are repealed.

677 Section 15. Section 554.114, Florida Statutes, is amended

678 to read:

679 554.114 Prohibitions; penalties.-

680 (1) A person may not:

681 (a) Operate a boiler at a public assembly location without

682 a valid certificate of operation compliance for that boiler;

683 (b) ~~Give false or forged information to the department or~~

684 ~~an inspector for the purpose of obtaining a certificate of~~

685 ~~compliance;~~

686 ~~(c)~~ Use a certificate of operation compliance for any

687 boiler other than for the boiler for which it was issued;

688 ~~(c)(d)~~ Operate a boiler for which the certificate of

689 operation compliance has been suspended, revoked, or not

690 renewed;

691 ~~(e) Give false or forged information to the department for~~

692 ~~the purpose of obtaining a certificate of competence; or~~

693 ~~(d)(f)~~ Inspect any boiler regulated under this chapter the

694 ~~provisions of ss. 554.1011-554.115~~ without having a valid

695 certificate of competency.

696 (2) A boiler insurance company that fails to inspect or to

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697 have inspected, in accordance with this chapter, any boiler
 698 insured by the company and regulated under this chapter is
 699 subject to the penalties provided in subsection (4) Any person
 700 who violates this section is guilty of a misdemeanor of the
 701 second degree, punishable by fine as provided in s. 775.083.

702 (3) An authorized inspection agency that is under contract
 703 with a boiler insurance company and that fails to inspect, in
 704 accordance with this chapter, any boiler insured by the company
 705 and regulated under this chapter is subject to the penalties
 706 provided in subsection (4).

707 (4) A boiler insurance company, authorized inspection
 708 agency, or other person in violation of this section for more
 709 than 30 days shall pay a fine of \$10 per day for the first 10
 710 days of noncompliance, \$50 per day for the subsequent 20 days of
 711 noncompliance, and \$100 per day for each subsequent day over 20
 712 days of noncompliance.

713 Section 16. Section 554.115, Florida Statutes, is amended
 714 to read:

715 554.115 Disciplinary proceedings.—

716 (1) The department may deny, refuse to renew, suspend, or
 717 revoke a certificate of operation compliance upon proof that:

718 (a) The certificate has been obtained by fraud or
 719 misrepresentation;

720 (b) The boiler for which the certificate was issued cannot
 721 be operated safely; ~~or~~

722 (c) The person who received the certificate willfully or
 723 deliberately violated the State Boiler Code, this chapter, ~~or~~
 724 ~~ss. 554.1011-554.115~~ or any other rule adopted pursuant to this
 725 chapter; or ~~ss. 554.1011-554.115.~~

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726 (d) The owner of a boiler:

727 1. Operated a boiler at a public assembly location without
 728 a valid certificate of operation for that boiler;

729 2. Used a certificate of operation for a boiler other than
 730 the boiler for which the certificate of operation was issued;

731 3. Gave false or forged information to the department, to
 732 an authorized inspection agency, or to another boiler inspector
 733 for the purpose of obtaining a certificate of operation;

734 4. Operated a boiler after the certificate of operation for
 735 the boiler expired, was not renewed, or was suspended or
 736 revoked;

737 5. Operated a boiler that is in an unsafe condition; or

738 6. Operated a boiler in a manner that is contrary to the
 739 requirements of this chapter or any rule adopted under this
 740 chapter.

741 (2) The department may deny, refuse to renew, suspend, or
 742 revoke a certificate of competency upon proof that:

743 (a) The certificate was obtained by fraud or
 744 misrepresentation;

745 (b) The inspector to whom the certificate was issued is no
 746 longer qualified under this chapter ~~ss. 554.1011-554.115~~ to
 747 inspect boilers; or

748 (c) The boiler inspector:

749 1. ~~Operated a boiler at a public assembly location without~~
 750 ~~a valid certificate of compliance for that boiler;~~

751 2. Gave false or forged information to the department, an
 752 authorized inspection agency, or to another boiler inspector for
 753 the purpose of obtaining a certificate of operation; or

754 ~~compliance;~~

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755 ~~3. Used a certificate of compliance for any boiler other~~
 756 ~~than the boiler for which it was issued;~~
 757 ~~4. Operated a boiler for which the certificate of~~
 758 ~~compliance has been suspended or revoked or has expired;~~
 759 ~~2.5. Inspected any boiler regulated under this chapter or~~
 760 ~~554.1011-554.115 without having obtained a valid certificate of~~
 761 ~~competency.~~
 762 ~~6. Operated a boiler that is in an unsafe condition; or~~
 763 ~~7. Operated a boiler in a manner that is contrary to the~~
 764 ~~requirements of this chapter or any rule adopted under this~~
 765 ~~chapter.~~
 766 (3) Each suspension of a certificate of operation
 767 compliance or certificate of competency shall continue in effect
 768 until all violations have been corrected and, for boiler safety
 769 violations, until the boiler has been inspected by an authorized
 770 inspector and shown to be in a safe working condition.
 771 ~~(4) A person in violation of this section who does not have~~
 772 ~~a valid certificate of competency shall be reported by the chief~~
 773 ~~inspector to the appropriate state attorney.~~
 774 ~~(5) A person in violation of this section who has a valid~~
 775 ~~certificate of competency is subject to administrative action by~~
 776 ~~the chief inspector.~~
 777 ~~(4)(6)~~ A revocation of a certificate of competency is
 778 permanent, and a revoked certificate of competency may not be
 779 reinstated or a new certificate of competency issued to the same
 780 person. A suspension of a certificate of competency continues in
 781 effect until all violations have been corrected. ~~A suspension of~~
 782 ~~a certificate of compliance for any boiler safety violation~~
 783 ~~continues in effect until the boiler has been inspected by an~~

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784 ~~authorized inspector and shown to be in safe working condition.~~
 785 Section 17. Section 554.1151, Florida Statutes, is created
 786 to read:
 787 554.1151 Administrative fine in lieu of or in addition to
 788 suspension, revocation, or refusal to renew a certificate of
 789 operation or competency.
 790 (1) If the department finds that one or more grounds exist
 791 for the suspension, revocation, or refusal to renew any
 792 certificate of operation or certificate of competency issued
 793 under this chapter, the department may, in its discretion, in
 794 lieu of or in addition to suspension or revocation or in lieu of
 795 refusal to renew, impose upon the certificateholder an
 796 administrative penalty in an amount up to \$500, or, if the
 797 department has found willful misconduct or willful violation on
 798 the part of the certificateholder, in an amount up to \$3,500.
 799 (2) The department may allow the certificateholder a
 800 reasonable period, no more than 30 days, within which to pay to
 801 the department the amount of the penalty so imposed. If the
 802 certificateholder fails to pay the penalty in its entirety to
 803 the department within the period so allowed, the certificate of
 804 that person must be suspended until the penalty is paid. If the
 805 certificateholder fails to pay the penalty in its entirety to
 806 the department within 90 days after the period so allowed, the
 807 certificate of that person must be revoked.
 808 Section 18. Section 554.116, Florida Statutes, is created
 809 to read:
 810 554.116 Report on insured losses.—A boiler insurance
 811 company that insures any boiler in this state must annually file
 812 a report with the chief boiler inspector, within 30 days after

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813 the end of the previous calendar year, regarding claims paid by
 814 the insurer under policies insuring boilers in this state. The
 815 report must include the type of establishment in which the
 816 boiler was located, the location of the establishment, the
 817 amount of the loss, the apparent cause of the loss, and any
 818 other information that the department determines is not
 819 inconsistent with the intent of the safety objectives of the
 820 State Boiler Code. The department shall adopt a form by rule for
 821 submission of the report.

822 Section 19. Subsection (7) of section 624.307, Florida
 823 Statutes, is amended to read:

824 624.307 General powers; duties.-

825 (7) The department and office, within existing resources,
 826 may expend funds for the professional development of its
 827 employees, including, but not limited to, professional dues for
 828 employees who are required to be members of professional
 829 organizations; examinations leading to professional designations
 830 required for employment with the office; training courses and
 831 examinations provided through, and to ensure compliance with,
 832 the National Association of Insurance Commissioners; or other
 833 training courses related to the regulation of insurance.

834 Section 20. Present subsections (1), (2), and (3) and (4)
 835 through (19) of section 626.015, Florida Statutes, are
 836 redesignated as subsections (2), (3), and (4) and (6) through
 837 (21), respectively, present subsection (8) is amended, and new
 838 subsections (1) and (5) are added to that section, to read:

839 626.015 Definitions.-As used in this part:

840 (1) "Active participant" means a member in good standing of
 841 an association who attends 4 or more hours of association

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842 meetings every year, not including any department-approved
 843 continuing education course.

844 (5) "Association" includes the Florida Association of
 845 Insurance Agents (FAIA), the National Association of Insurance
 846 and Financial Advisors (NAIFA), the Florida Association of
 847 Health Underwriters (FAHU), the Latin American Association of
 848 Insurance Agencies (LAAIA), the Florida Association of Public
 849 Insurance Adjusters (FAPIA), the Florida Bail Agents Association
 850 (FBAA), or the Professional Bail Agents of the United States
 851 (PBUS).

852 (10)~~(8)~~ "Insurance agency" means a business location at
 853 which an individual, firm, partnership, corporation,
 854 association, or other entity, other than an employee of the
 855 individual, firm, partnership, corporation, association, or
 856 other entity and other than an insurer as defined by s. 624.03
 857 or an adjuster as defined by subsection (2) ~~(1)~~, engages in any
 858 activity or employs individuals to engage in any activity which
 859 by law may be performed only by a licensed insurance agent.

860 Section 21. Section 626.207, Florida Statutes, is amended
 861 to read:

862 626.207 Disqualification of applicants and licensees;
 863 penalties against licensees; rulemaking authority.-

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

865 (a) "Applicant" means an individual applying for licensure
 866 or relicensure under this chapter, and an officer, director,
 867 majority owner, partner, manager, or other person who manages or
 868 controls an entity applying for licensure or relicensure under
 869 this chapter.

870 (c) "Financial services business" means any financial

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871 activity regulated by the Department of Financial Services, the
872 Office of Insurance Regulation, or the Office of Financial
873 Regulation.

874 ~~(b)(2) For purposes of this section, the terms~~ "Felony of
875 the first degree" and "capital felony" include all felonies
876 designated as such by the Florida Statutes, as well as any
877 felony so designated in the jurisdiction in which the plea is
878 entered or judgment is rendered.

879 (2)(3) An applicant who has been found guilty of or has
880 pleaded guilty or nolo contendere to any of the following
881 crimes, regardless of adjudication, is permanently barred from
882 licensure under this chapter: ~~commits~~

883 (a) A felony of the first degree;
884 (b) A capital felony;
885 (c) A felony involving money laundering, ~~fraud, or~~
886 (d) A felony embezzlement; or
887 (e) A felony directly related to the financial services
888 business ~~is permanently barred from applying for a license under~~
889 this part. This bar applies to convictions, guilty pleas, or
890 nolo contendere pleas, regardless of adjudication, by any
891 applicant, officer, director, majority owner, partner, manager,
892 or other person who manages or controls any applicant.

893 (3)(4) An applicant who has been found guilty of or has
894 pleaded guilty or nolo contendere to a crime ~~For all other~~
895 crimes not included in subsection (2), regardless of
896 adjudication, is subject to (3), the department shall adopt
897 rules establishing the process and application of disqualifying
898 periods that include:

899 (a) A 15-year disqualifying period for all felonies

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900 involving moral turpitude which ~~that~~ are not specifically
901 included in the permanent bar contained in subsection (2) ~~(3)~~.

902 (b) A 7-year disqualifying period for all felonies to which
903 neither the permanent bar in subsection (2) ~~(3)~~ nor the 15-year
904 disqualifying period in paragraph (a) applies.

905 (c) A 7-year disqualifying period for all misdemeanors
906 directly related to the financial services business.

907 (4)(5) The department shall adopt rules to administer this
908 section. The rules must provide ~~providing~~ for additional
909 disqualifying periods due to the commitment of multiple crimes
910 and may include other factors reasonably related to the
911 applicant's criminal history. The rules shall provide for
912 mitigating and aggravating factors. However, mitigation may not
913 result in a period of disqualification of less than 7 years and
914 may not mitigate the disqualifying periods in paragraphs (3)(b)
915 and (c) ~~(4)(b) and (e)~~.

916 (5)(6) For purposes of this section, the disqualifying
917 periods begin upon the applicant's final release from
918 supervision or upon completion of the applicant's criminal
919 sentence, including payment of fines, restitution, and court
920 costs for the crime for which the disqualifying period applies.
921 The department may not issue a license to an applicant unless
922 all related fines, court costs and fees, and court-ordered
923 restitution have been paid.

924 (6)(7) After the disqualifying period has ~~expired been met,~~
925 the burden is on the applicant to demonstrate that the applicant
926 has been rehabilitated, does not pose a risk to the insurance-
927 buying public, is fit and trustworthy to engage in the business
928 of insurance pursuant to s. 626.611(1)(g), and is otherwise

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929 qualified for licensure.

930 (7) Notwithstanding subsections (2) and (3), upon a grant
 931 of a pardon or the restoration of civil rights pursuant to
 932 chapter 940 and s. 8, Art. IV of the State Constitution with
 933 respect to a finding of guilt or a plea under subsection (2) or
 934 subsection (3), such finding or plea no longer bars or
 935 disqualifies the applicant from licensure under this chapter
 936 unless the clemency specifically excludes licensure in the
 937 financial services business; however, a pardon or restoration of
 938 civil rights does not require the department to award such
 939 license.

940 (8) The department shall adopt rules establishing specific
 941 penalties against licensees in accordance with ss. 626.641 and
 942 626.651 for violations of s. 626.611, s. 626.621, s. 626.8437,
 943 s. 626.844, s. 626.935, s. 634.181, s. 634.191, s. 634.320, s.
 944 634.321, s. 634.422, s. 634.423, s. 642.041, or s. 642.043. The
 945 purpose of the revocation or suspension is to provide a
 946 sufficient penalty to deter future violations of the Florida
 947 Insurance Code. The imposition of a revocation or the length of
 948 suspension shall be based on the type of conduct and the
 949 probability that the propensity to commit further illegal
 950 conduct has been overcome at the time of eligibility for
 951 relicensure. The length of suspension may be adjusted based on
 952 aggravating or mitigating factors, established by rule and
 953 consistent with this purpose.

954 (9) Section 112.011 does not apply to any applicants for
 955 licensure under the Florida Insurance Code, including, but not
 956 limited to, agents, agencies, adjusters, adjusting firms,
 957 customer representatives, or managing general agents.

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958 Section 22. Section 626.9954, Florida Statutes, is amended
 959 to read:

960 626.9954 Disqualification from registration.—

961 (1) As used in this section, the terms “felony of the first
 962 degree” and “capital felony” include all felonies so designated
 963 by the laws of this state, as well as any felony so designated
 964 in the jurisdiction in which the plea is entered or judgment is
 965 rendered.

966 (2) An applicant who has been found guilty of or has
 967 pleaded guilty or nolo contendere to the following crimes,
 968 regardless of adjudication, is permanently disqualified from
 969 registration under this part: ~~commits~~

970 (a) A felony of the first degree;

971 (b) A capital felony;

972 (c) A felony involving money laundering; ~~fraud, or~~

973 (d) A felony embezzlement; or

974 (e) A felony directly related to the financial services
 975 business ~~is permanently barred from applying for registration~~
 976 under this part. This bar applies to convictions, guilty pleas,
 977 or nolo contendere pleas, regardless of adjudication, by an
 978 applicant.

979 (3) An applicant who has been found guilty of or has
 980 pleaded guilty or nolo contendere to a crime ~~For all other~~
 981 crimes not described in subsection (2), regardless of
 982 adjudication, is subject to the department may adopt rules
 983 establishing the process and application of disqualifying
 984 periods including:

985 (a) A 15-year disqualifying period for all felonies
 986 involving moral turpitude which are not specifically included in

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987 subsection (2).

988 (b) A 7-year disqualifying period for all felonies not
989 specifically included in subsection (2) or paragraph (a).

990 (c) A 7-year disqualifying period for all misdemeanors
991 directly related to the financial services business.

992 (4) The department may adopt rules to administer this
993 section. The rules must provide for ~~providing~~ additional
994 disqualifying periods due to the commitment of multiple crimes
995 and may include other factors reasonably related to the
996 applicant's criminal history. The rules must provide for
997 mitigating and aggravating factors. However, mitigation may not
998 result in a disqualifying period of less than 7 years and may
999 not mitigate the disqualifying periods in paragraph (3) (b) or
1000 paragraph (3) (c).

1001 (5) For purposes of this section, the disqualifying periods
1002 begin upon the applicant's final release from supervision or
1003 upon completion of the applicant's criminal sentence, ~~including~~
1004 ~~the payment of fines, restitution, and court costs for the crime~~
1005 ~~for which the disqualifying period applies. The department may~~
1006 not issue a registration to an applicant unless all related
1007 fines, court costs and fees, and court-ordered restitution have
1008 been paid.

1009 (6) After the disqualifying period has ~~expired been met,~~
1010 the burden is on the applicant to demonstrate to the
1011 satisfaction of the department that he or she has been
1012 rehabilitated and does not pose a risk to the insurance-buying
1013 public and is otherwise qualified for registration.

1014 (7) Notwithstanding subsections (2) and (3), upon a grant
1015 of a pardon or the restoration of civil rights pursuant to

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1016 chapter 940 and s. 8, Art. IV of the State Constitution with
1017 respect to a finding of guilt or a plea under subsection (2) or
1018 subsection (3), such finding or plea no longer bars or
1019 disqualifies the applicant from applying for registration under
1020 this part unless the clemency specifically excludes licensure or
1021 specifically excludes registration in the financial services
1022 business; however, a pardon or restoration of civil rights does
1023 not require the department to award such registration.

1024 ~~(8)(7)~~ Section 112.011 does not apply to an applicant for
1025 registration as a navigator.

1026 Section 23. Paragraph (a) of subsection (3) of section
1027 626.2815, Florida Statutes, is amended, and paragraph (j) is
1028 added to that subsection, to read:

1029 626.2815 Continuing education requirements.-

1030 (3) Each licensee except a title insurance agent must
1031 complete a 5-hour update course every 2 years which is specific
1032 to the license held by the licensee. The course must be
1033 developed and offered by providers and approved by the
1034 department. The content of the course must address all lines of
1035 insurance for which examination and licensure are required and
1036 include the following subject areas: insurance law updates,
1037 ethics for insurance professionals, disciplinary trends and case
1038 studies, industry trends, premium discounts, determining
1039 suitability of products and services, and other similar
1040 insurance-related topics the department determines are relevant
1041 to legally and ethically carrying out the responsibilities of
1042 the license granted. A licensee who holds multiple insurance
1043 licenses must complete an update course that is specific to at
1044 least one of the licenses held. Except as otherwise specified,

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1045 any remaining required hours of continuing education are
 1046 elective and may consist of any continuing education course
 1047 approved by the department under this section.

1048 (a) Except as provided in paragraphs (b), (c), (d), (e),
 1049 ~~and (i), and (j)~~, each licensee must also complete 19 hours of
 1050 elective continuing education courses every 2 years.

1051 (j) For a licensee who is an active participant in an
 1052 association, 2 hours of elective continuing education credit per
 1053 calendar year may be approved by the department, if properly
 1054 reported by the association.

1055 Section 24. Paragraph (n) of subsection (1) and subsection
 1056 (2) of section 626.611, Florida Statutes, are amended to read:

1057 626.611 Grounds for compulsory refusal, suspension, or
 1058 revocation of agent's, title agency's, adjuster's, customer
 1059 representative's, service representative's, or managing general
 1060 agent's license or appointment.—

1061 (1) The department shall deny an application for, suspend,
 1062 revoke, or refuse to renew or continue the license or
 1063 appointment of any applicant, agent, title agency, adjuster,
 1064 customer representative, service representative, or managing
 1065 general agent, and it shall suspend or revoke the eligibility to
 1066 hold a license or appointment of any such person, if it finds
 1067 that as to the applicant, licensee, or appointee any one or more
 1068 of the following applicable grounds exist:

1069 (n) Having been found guilty of or having pleaded guilty or
 1070 nolo contendere to a felony or a crime punishable by
 1071 imprisonment of 1 year or more under the law of the United
 1072 States of America or of any state thereof or under the law of
 1073 any other country ~~which involves moral turpitude~~, without regard

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1074 to whether a judgment of conviction has been entered by the
 1075 court having jurisdiction of such cases.

1076 (2) The department shall, upon receipt of information or an
 1077 indictment, immediately temporarily suspend a license or
 1078 appointment issued under this chapter when the licensee is
 1079 charged with a felony enumerated in s. 626.207(2) ~~s. 626.207(3)~~.
 1080 Such suspension shall continue if the licensee is found guilty
 1081 of, or pleads guilty or nolo contendere to, the crime,
 1082 regardless of whether a judgment or conviction is entered,
 1083 during a pending appeal. A person may not transact insurance
 1084 business after suspension of his or her license or appointment.

1085 Section 25. Subsection (8) of section 626.621, Florida
 1086 Statutes, is amended, and a new subsection (15) is added to that
 1087 section, to read:

1088 626.621 Grounds for discretionary refusal, suspension, or
 1089 revocation of agent's, adjuster's, customer representative's,
 1090 service representative's, or managing general agent's license or
 1091 appointment.—The department may, in its discretion, deny an
 1092 application for, suspend, revoke, or refuse to renew or continue
 1093 the license or appointment of any applicant, agent, adjuster,
 1094 customer representative, service representative, or managing
 1095 general agent, and it may suspend or revoke the eligibility to
 1096 hold a license or appointment of any such person, if it finds
 1097 that as to the applicant, licensee, or appointee any one or more
 1098 of the following applicable grounds exist under circumstances
 1099 for which such denial, suspension, revocation, or refusal is not
 1100 mandatory under s. 626.611:

1101 ~~(8) Having been found guilty of or having pleaded guilty or~~
 1102 ~~nolo contendere to a felony or a crime punishable by~~

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1103 ~~imprisonment of 1 year or more under the law of the United~~
 1104 ~~States of America or of any state thereof or under the law of~~
 1105 ~~any other country, without regard to whether a judgment of~~
 1106 ~~conviction has been entered by the court having jurisdiction of~~
 1107 ~~such cases.~~

1108 (15) Denial, suspension, or revocation of, or any other
 1109 adverse administrative action against, a license to practice or
 1110 conduct any regulated profession, business, or vocation by this
 1111 state, any other state, any nation, any possession or district
 1112 of the United States, any court, or any lawful agency thereof.

1113 Section 26. Subsection (2) of section 626.7845, Florida
 1114 Statutes, is amended to read:
 1115 626.7845 Prohibition against unlicensed transaction of life
 1116 insurance.-

1117 (2) Except as provided in s. 626.112(6), with respect to
 1118 any line of authority specified in s. 626.015(12) ~~or~~
 1119 ~~626.015(10)~~, an ~~no~~ individual may not shall, unless licensed as
 1120 a life agent:

1121 (a) Solicit insurance or annuities or procure applications;
 1122 (b) In this state, engage or hold himself or herself out as
 1123 engaging in the business of analyzing or abstracting insurance
 1124 policies or of counseling or advising or giving opinions to
 1125 persons relative to insurance or insurance contracts, unless the
 1126 individual is other than:

1127 1. ~~As~~ A consulting actuary advising insurers ~~an insurer~~; or
 1128 2. An employee ~~As to the counseling and advising of a labor~~
 1129 union, association, employer, or other business entity ~~labor~~
 1130 ~~unions, associations, trustees, employers, or other business~~
 1131 ~~entities, or~~ the subsidiaries and affiliates of each, who

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1132 counsels and advises such entity or entities relative to their
 1133 interests and those of their members or employees under
 1134 insurance benefit plans; or

1135 3. A trustee advising a settlor, a beneficiary, or a person
 1136 regarding his or her interests in a trust, relative to insurance
 1137 benefit plans; or

1138 (c) In this state, from this state, or with a resident of
 1139 this state, offer or attempt to negotiate on behalf of another
 1140 person a viatical settlement contract as defined in s. 626.9911.

1141 Section 27. Section 626.8305, Florida Statutes, is amended
 1142 to read:

1143 626.8305 Prohibition against the unlicensed transaction of
 1144 health insurance.-Except as provided in s. 626.112(6), with
 1145 respect to any line of authority specified in s. 626.015(8) ~~or~~
 1146 ~~626.015(6)~~, an ~~no~~ individual may not shall, unless licensed as a
 1147 health agent:

1148 (1) Solicit insurance or procure applications; or

1149 (2) In this state, engage or hold himself or herself out as
 1150 engaging in the business of analyzing or abstracting insurance
 1151 policies or of counseling or advising or giving opinions to
 1152 persons relative to insurance contracts, unless the individual
 1153 is other than:

1154 (a) ~~As~~ A consulting actuary advising insurers; ~~or~~

1155 (b) An employee ~~As to the counseling and advising of a~~
 1156 labor union, association, employer, or other business entity
 1157 ~~labor unions, associations, trustees, employers, or other~~
 1158 ~~business entities, or~~ the subsidiaries and affiliates of each,
 1159 who counsels and advises such entity or entities relative to
 1160 their interests and those of their members or employees under

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1161 insurance benefit plans; ~~or-~~

1162 (c) A trustee advising a settlor, a beneficiary, or a
 1163 person regarding his or her interests in a trust, relative to
 1164 insurance benefit plans.

1165 Section 28. Subsection (1) of section 626.861, Florida
 1166 Statutes, is amended to read:

1167 626.861 Insurer's officers, insurer's employees, reciprocal
 1168 insurer's representatives; adjustments by.-

1169 (1) ~~This part may not~~ ~~Nothing in this part shall~~ be
 1170 construed to prevent an executive officer of any insurer, ~~or~~ a
 1171 regularly salaried employee of an insurer handling claims with
 1172 respect to health insurance, a regular employee of an insurer
 1173 handling claims with respect to residential property when the
 1174 sublimit coverage does not exceed \$500, or the duly designated
 1175 attorney or agent authorized and acting for subscribers to
 1176 reciprocal insurers, from adjusting any claim loss or damage
 1177 under any insurance contract of such insurer.

1178 Section 29. Paragraph (c) of subsection (5) and subsection
 1179 (6) of section 626.9543, Florida Statutes, are amended to read:

1180 626.9543 Holocaust victims.-

1181 (5) PROOF OF A CLAIM.-Any insurer doing business in this
 1182 state, in receipt of a claim from a Holocaust victim or from a
 1183 beneficiary, descendant, or heir of a Holocaust victim, shall:

1184 (c) Permit claims irrespective of any statute of
 1185 limitations or notice requirements imposed by any insurance
 1186 policy issued, ~~provided the claim is submitted on or before July~~
 1187 ~~1, 2018.~~

1188 (6) STATUTE OF LIMITATIONS.-Notwithstanding any law or
 1189 agreement among the parties to an insurance policy to the

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1190 contrary, any action brought by Holocaust victims or by a
 1191 beneficiary, heir, or a descendant of a Holocaust victim seeking
 1192 proceeds of an insurance policy issued or in effect between 1920
 1193 and 1945, inclusive, ~~may shall~~ not be dismissed for failure to
 1194 comply with the applicable statute of limitations or laches
 1195 ~~provided the action is commenced on or before July 1, 2018.~~

1196 Section 30. Section 633.516, Florida Statutes, is amended
 1197 to read:

1198 633.516 Studies of Division to make study of firefighter
 1199 employee occupational diseases of firefighters or persons in
 1200 other fire-related fields.-The division may contract for
 1201 studies, subject to the availability of funding, of shall make a
 1202 continuous study of firefighter employee occupational diseases
 1203 of firefighters or persons in other fire-related fields and the
 1204 ways and means for the their control and prevention of such
 1205 occupational diseases. When such a study or another study that
 1206 is wholly or partly funded under an agreement, including a
 1207 contract or grant, with the department tracks a disease of an
 1208 individual firefighter or a person in another fire-related
 1209 field, the division may, with associated security measures,
 1210 release the confidential information, including a social
 1211 security number, of that individual to a party who has entered
 1212 into an agreement with the department and shall adopt rules
 1213 necessary for such control and prevention. For this purpose, the
 1214 division is authorized to cooperate with firefighter employers,
 1215 firefighter employees, and insurers and with the Department of
 1216 Health.

1217 Section 31. Paragraph (a) of subsection (6) and subsection
 1218 (7) of section 768.28, Florida Statutes, are amended to read:

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1219 768.28 Waiver of sovereign immunity in tort actions;
 1220 recovery limits; limitation on attorney fees; statute of
 1221 limitations; exclusions; indemnification; risk management
 1222 programs.—

1223 (6) (a) An action may not be instituted on a claim against
 1224 the state or one of its agencies or subdivisions unless the
 1225 claimant presents the claim in writing to the appropriate
 1226 agency, and also, except as to any claim against a municipality,
 1227 county, or the Florida Space Authority, presents such claim in
 1228 writing to the Department of Financial Services, within 3 years
 1229 after such claim accrues and the Department of Financial
 1230 Services or the appropriate agency denies the claim in writing;
 1231 except that, if:

1232 1. Such claim is for contribution pursuant to s. 768.31, it
 1233 must be so presented within 6 months after the judgment against
 1234 the tortfeasor seeking contribution has become final by lapse of
 1235 time for appeal or after appellate review or, if there is no
 1236 such judgment, within 6 months after the tortfeasor seeking
 1237 contribution has either discharged the common liability by
 1238 payment or agreed, while the action is pending against her or
 1239 him, to discharge the common liability; or

1240 2. Such action is for wrongful death, the claimant must
 1241 present the claim in writing to the Department of Financial
 1242 Services within 2 years after the claim accrues.

1243 (7) In actions brought pursuant to this section, process
 1244 shall be served upon the head of the agency concerned and also,
 1245 except as to a defendant municipality, county, or the Florida
 1246 Space Authority, upon the Department of Financial Services; and
 1247 the department or the agency concerned shall have 30 days within

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1248 which to plead thereto.

1249 Section 32. Subsections (3) and (4) and paragraph (e) of
 1250 subsection (5) of section 288.706, Florida Statutes, are amended
 1251 to read:

1252 288.706 Florida Minority Business Loan Mobilization
 1253 Program.—

1254 (3) Notwithstanding ss. 215.422(15) and 216.181(16) ~~ss-~~
 1255 ~~215.422(14) and 216.181(16)~~, and pursuant to s. 216.351, under
 1256 the Florida Minority Business Loan Mobilization Program, a state
 1257 agency may disburse up to 10 percent of the base contract award
 1258 amount to assist a minority business enterprise vendor that is
 1259 awarded a state agency contract for goods or services in
 1260 obtaining working capital financing as provided in subsection
 1261 (5).

1262 (4) Notwithstanding ss. 215.422(15) and 216.181(16) ~~ss-~~
 1263 ~~215.422(14) and 216.181(16)~~, and pursuant to s. 216.351, in lieu
 1264 of applying for participation in the Florida Minority Business
 1265 Loan Mobilization Program, a minority business enterprise vendor
 1266 awarded a state agency contract for the performance of
 1267 professional services may apply with that contracting state
 1268 agency for up to 5 percent of the base contract award amount.
 1269 The contracting state agency may award such advance in order to
 1270 facilitate the performance of that contract.

1271 (5) The following Florida Minority Business Loan
 1272 Mobilization Program procedures apply to minority business
 1273 enterprise vendors for contracts awarded by a state agency for
 1274 construction or professional services or for the provision of
 1275 goods or services:

1276 (e) The following procedures shall apply when the minority

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1277 business enterprise is the prime contract vendor to the
1278 contracting state agency:

1279 1. Pursuant to s. 216.351, ss. 215.422(15) and 216.181(16)
1280 ~~the provisions of ss. 215.422(14) and 216.181(16)~~ do not apply
1281 to this paragraph.

1282 2. For construction contracts, the designated loan
1283 mobilization payment shall be disbursed when:

1284 a. The minority business enterprise prime contract vendor
1285 requests disbursement in the first application for payment.

1286 b. The contracting state agency has issued a notice to
1287 proceed and has approved the first application for payment.

1288 3. For contracts other than construction contracts, the
1289 designated loan mobilization payment shall be disbursed when:

1290 a. The minority business enterprise prime contract vendor
1291 requests disbursement by letter delivered to the contracting
1292 state agency after the execution of the contract but prior to
1293 the commencement of work.

1294 b. The contracting state agency has approved the minority
1295 business enterprise prime contract vendor's letter of request.

1296 4. The designated loan mobilization payment may be paid by
1297 the contracting state agency prior to the commencement of work.
1298 In order to ensure that the contract time provisions do not
1299 commence until the minority business enterprise prime contract
1300 vendor has adequate working capital, the contract documents may
1301 provide that the contract shall commence at such time as the
1302 contracting state agency releases the designated loan
1303 mobilization payment to the minority business enterprise prime
1304 contract vendor and participating financial institution pursuant
1305 to the working capital agreement.

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1306 Section 33. Section 626.7315, Florida Statutes, is amended
1307 to read:

1308 626.7315 Prohibition against the unlicensed transaction of
1309 general lines insurance.—With respect to any line of authority
1310 as defined in s. 626.015(7) ~~s. 626.015(5)~~, no individual shall,
1311 unless licensed as a general lines agent:

1312 (1) Solicit insurance or procure applications therefor;

1313 (2) In this state, receive or issue a receipt for any money
1314 on account of or for any insurer, or receive or issue a receipt
1315 for money from other persons to be transmitted to any insurer
1316 for a policy, contract, or certificate of insurance or any
1317 renewal thereof, even though the policy, certificate, or
1318 contract is not signed by him or her as agent or representative
1319 of the insurer, except as provided in s. 626.0428(1);

1320 (3) Directly or indirectly represent himself or herself to
1321 be an agent of any insurer or as an agent, to collect or forward
1322 any insurance premium, or to solicit, negotiate, effect,
1323 procure, receive, deliver, or forward, directly or indirectly,
1324 any insurance contract or renewal thereof or any endorsement
1325 relating to an insurance contract, or attempt to effect the
1326 same, of property or insurable business activities or interests,
1327 located in this state;

1328 (4) In this state, engage or hold himself or herself out as
1329 engaging in the business of analyzing or abstracting insurance
1330 policies or of counseling or advising or giving opinions, other
1331 than as a licensed attorney at law, relative to insurance or
1332 insurance contracts, for fee, commission, or other compensation,
1333 other than as a salaried bona fide full-time employee so
1334 counseling and advising his or her employer relative to the

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1335 insurance interests of the employer and of the subsidiaries or
 1336 business affiliates of the employer;

1337 (5) In any way, directly or indirectly, make or cause to be
 1338 made, or attempt to make or cause to be made, any contract of
 1339 insurance for or on account of any insurer;

1340 (6) Solicit, negotiate, or in any way, directly or
 1341 indirectly, effect insurance contracts, if a member of a
 1342 partnership or association, or a stockholder, officer, or agent
 1343 of a corporation which holds an agency appointment from any
 1344 insurer; or

1345 (7) Receive or transmit applications for suretyship, or
 1346 receive for delivery bonds founded on applications forwarded
 1347 from this state, or otherwise procure suretyship to be effected
 1348 by a surety insurer upon the bonds of persons in this state or
 1349 upon bonds given to persons in this state.

1350 Section 34. Paragraph (c) of subsection (6) of section
 1351 627.351, Florida Statutes, is amended to read:

1352 627.351 Insurance risk apportionment plans.—

1353 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

1354 (c) The corporation's plan of operation:

1355 1. Must provide for adoption of residential property and
 1356 casualty insurance policy forms and commercial residential and
 1357 nonresidential property insurance forms, which must be approved
 1358 by the office before use. The corporation shall adopt the
 1359 following policy forms:

1360 a. Standard personal lines policy forms that are
 1361 comprehensive multiperil policies providing full coverage of a
 1362 residential property equivalent to the coverage provided in the
 1363 private insurance market under an HO-3, HO-4, or HO-6 policy.

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1364 b. Basic personal lines policy forms that are policies
 1365 similar to an HO-8 policy or a dwelling fire policy that provide
 1366 coverage meeting the requirements of the secondary mortgage
 1367 market, but which is more limited than the coverage under a
 1368 standard policy.

1369 c. Commercial lines residential and nonresidential policy
 1370 forms that are generally similar to the basic perils of full
 1371 coverage obtainable for commercial residential structures and
 1372 commercial nonresidential structures in the admitted voluntary
 1373 market.

1374 d. Personal lines and commercial lines residential property
 1375 insurance forms that cover the peril of wind only. The forms are
 1376 applicable only to residential properties located in areas
 1377 eligible for coverage under the coastal account referred to in
 1378 sub-subparagraph (b)2.a.

1379 e. Commercial lines nonresidential property insurance forms
 1380 that cover the peril of wind only. The forms are applicable only
 1381 to nonresidential properties located in areas eligible for
 1382 coverage under the coastal account referred to in sub-
 1383 subparagraph (b)2.a.

1384 f. The corporation may adopt variations of the policy forms
 1385 listed in sub-subparagraphs a.-e. which contain more restrictive
 1386 coverage.

1387 g. Effective January 1, 2013, the corporation shall offer a
 1388 basic personal lines policy similar to an HO-8 policy with
 1389 dwelling repair based on common construction materials and
 1390 methods.

1391 2. Must provide that the corporation adopt a program in
 1392 which the corporation and authorized insurers enter into quota

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1393 share primary insurance agreements for hurricane coverage, as
 1394 defined in s. 627.4025(2)(a), for eligible risks, and adopt
 1395 property insurance forms for eligible risks which cover the
 1396 peril of wind only.

1397 a. As used in this subsection, the term:

1398 (I) "Quota share primary insurance" means an arrangement in
 1399 which the primary hurricane coverage of an eligible risk is
 1400 provided in specified percentages by the corporation and an
 1401 authorized insurer. The corporation and authorized insurer are
 1402 each solely responsible for a specified percentage of hurricane
 1403 coverage of an eligible risk as set forth in a quota share
 1404 primary insurance agreement between the corporation and an
 1405 authorized insurer and the insurance contract. The
 1406 responsibility of the corporation or authorized insurer to pay
 1407 its specified percentage of hurricane losses of an eligible
 1408 risk, as set forth in the agreement, may not be altered by the
 1409 inability of the other party to pay its specified percentage of
 1410 losses. Eligible risks that are provided hurricane coverage
 1411 through a quota share primary insurance arrangement must be
 1412 provided policy forms that set forth the obligations of the
 1413 corporation and authorized insurer under the arrangement,
 1414 clearly specify the percentages of quota share primary insurance
 1415 provided by the corporation and authorized insurer, and
 1416 conspicuously and clearly state that the authorized insurer and
 1417 the corporation may not be held responsible beyond their
 1418 specified percentage of coverage of hurricane losses.

1419 (II) "Eligible risks" means personal lines residential and
 1420 commercial lines residential risks that meet the underwriting
 1421 criteria of the corporation and are located in areas that were

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1422 eligible for coverage by the Florida Windstorm Underwriting
 1423 Association on January 1, 2002.

1424 b. The corporation may enter into quota share primary
 1425 insurance agreements with authorized insurers at corporation
 1426 coverage levels of 90 percent and 50 percent.

1427 c. If the corporation determines that additional coverage
 1428 levels are necessary to maximize participation in quota share
 1429 primary insurance agreements by authorized insurers, the
 1430 corporation may establish additional coverage levels. However,
 1431 the corporation's quota share primary insurance coverage level
 1432 may not exceed 90 percent.

1433 d. Any quota share primary insurance agreement entered into
 1434 between an authorized insurer and the corporation must provide
 1435 for a uniform specified percentage of coverage of hurricane
 1436 losses, by county or territory as set forth by the corporation
 1437 board, for all eligible risks of the authorized insurer covered
 1438 under the agreement.

1439 e. Any quota share primary insurance agreement entered into
 1440 between an authorized insurer and the corporation is subject to
 1441 review and approval by the office. However, such agreement shall
 1442 be authorized only as to insurance contracts entered into
 1443 between an authorized insurer and an insured who is already
 1444 insured by the corporation for wind coverage.

1445 f. For all eligible risks covered under quota share primary
 1446 insurance agreements, the exposure and coverage levels for both
 1447 the corporation and authorized insurers shall be reported by the
 1448 corporation to the Florida Hurricane Catastrophe Fund. For all
 1449 policies of eligible risks covered under such agreements, the
 1450 corporation and the authorized insurer must maintain complete

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1451 and accurate records for the purpose of exposure and loss
 1452 reimbursement audits as required by fund rules. The corporation
 1453 and the authorized insurer shall each maintain duplicate copies
 1454 of policy declaration pages and supporting claims documents.

1455 g. The corporation board shall establish in its plan of
 1456 operation standards for quota share agreements which ensure that
 1457 there is no discriminatory application among insurers as to the
 1458 terms of the agreements, pricing of the agreements, incentive
 1459 provisions if any, and consideration paid for servicing policies
 1460 or adjusting claims.

1461 h. The quota share primary insurance agreement between the
 1462 corporation and an authorized insurer must set forth the
 1463 specific terms under which coverage is provided, including, but
 1464 not limited to, the sale and servicing of policies issued under
 1465 the agreement by the insurance agent of the authorized insurer
 1466 producing the business, the reporting of information concerning
 1467 eligible risks, the payment of premium to the corporation, and
 1468 arrangements for the adjustment and payment of hurricane claims
 1469 incurred on eligible risks by the claims adjuster and personnel
 1470 of the authorized insurer. Entering into a quota sharing
 1471 insurance agreement between the corporation and an authorized
 1472 insurer is voluntary and at the discretion of the authorized
 1473 insurer.

1474 3. May provide that the corporation may employ or otherwise
 1475 contract with individuals or other entities to provide
 1476 administrative or professional services that may be appropriate
 1477 to effectuate the plan. The corporation may borrow funds by
 1478 issuing bonds or by incurring other indebtedness, and shall have
 1479 other powers reasonably necessary to effectuate the requirements

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1480 of this subsection, including, without limitation, the power to
 1481 issue bonds and incur other indebtedness in order to refinance
 1482 outstanding bonds or other indebtedness. The corporation may
 1483 seek judicial validation of its bonds or other indebtedness
 1484 under chapter 75. The corporation may issue bonds or incur other
 1485 indebtedness, or have bonds issued on its behalf by a unit of
 1486 local government pursuant to subparagraph (q)2. in the absence
 1487 of a hurricane or other weather-related event, upon a
 1488 determination by the corporation, subject to approval by the
 1489 office, that such action would enable it to efficiently meet the
 1490 financial obligations of the corporation and that such
 1491 financings are reasonably necessary to effectuate the
 1492 requirements of this subsection. The corporation may take all
 1493 actions needed to facilitate tax-free status for such bonds or
 1494 indebtedness, including formation of trusts or other affiliated
 1495 entities. The corporation may pledge assessments, projected
 1496 recoveries from the Florida Hurricane Catastrophe Fund, other
 1497 reinsurance recoverables, policyholder surcharges and other
 1498 surcharges, and other funds available to the corporation as
 1499 security for bonds or other indebtedness. In recognition of s.
 1500 10, Art. I of the State Constitution, prohibiting the impairment
 1501 of obligations of contracts, it is the intent of the Legislature
 1502 that no action be taken whose purpose is to impair any bond
 1503 indenture or financing agreement or any revenue source committed
 1504 by contract to such bond or other indebtedness.

1505 4. Must require that the corporation operate subject to the
 1506 supervision and approval of a board of governors consisting of
 1507 nine individuals who are residents of this state and who are
 1508 from different geographical areas of the state, one of whom is

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1509 appointed by the Governor and serves solely to advocate on
 1510 behalf of the consumer. The appointment of a consumer
 1511 representative by the Governor is deemed to be within the scope
 1512 of the exemption provided in s. 112.313(7) (b) and is in addition
 1513 to the appointments authorized under sub-subparagraph a.

1514 a. The Governor, the Chief Financial Officer, the President
 1515 of the Senate, and the Speaker of the House of Representatives
 1516 shall each appoint two members of the board. At least one of the
 1517 two members appointed by each appointing officer must have
 1518 demonstrated expertise in insurance and be deemed to be within
 1519 the scope of the exemption provided in s. 112.313(7) (b). The
 1520 Chief Financial Officer shall designate one of the appointees as
 1521 chair. All board members serve at the pleasure of the appointing
 1522 officer. All members of the board are subject to removal at will
 1523 by the officers who appointed them. All board members, including
 1524 the chair, must be appointed to serve for 3-year terms beginning
 1525 annually on a date designated by the plan. However, for the
 1526 first term beginning on or after July 1, 2009, each appointing
 1527 officer shall appoint one member of the board for a 2-year term
 1528 and one member for a 3-year term. A board vacancy shall be
 1529 filled for the unexpired term by the appointing officer. The
 1530 Chief Financial Officer shall appoint a technical advisory group
 1531 to provide information and advice to the board in connection
 1532 with the board's duties under this subsection. The executive
 1533 director and senior managers of the corporation shall be engaged
 1534 by the board and serve at the pleasure of the board. Any
 1535 executive director appointed on or after July 1, 2006, is
 1536 subject to confirmation by the Senate. The executive director is
 1537 responsible for employing other staff as the corporation may

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1538 require, subject to review and concurrence by the board.

1539 b. The board shall create a Market Accountability Advisory
 1540 Committee to assist the corporation in developing awareness of
 1541 its rates and its customer and agent service levels in
 1542 relationship to the voluntary market insurers writing similar
 1543 coverage.

1544 (I) The members of the advisory committee consist of the
 1545 following 11 persons, one of whom must be elected chair by the
 1546 members of the committee: four representatives, one appointed by
 1547 the Florida Association of Insurance Agents, one by the Florida
 1548 Association of Insurance and Financial Advisors, one by the
 1549 Professional Insurance Agents of Florida, and one by the Latin
 1550 American Association of Insurance Agencies; three
 1551 representatives appointed by the insurers with the three highest
 1552 voluntary market share of residential property insurance
 1553 business in the state; one representative from the Office of
 1554 Insurance Regulation; one consumer appointed by the board who is
 1555 insured by the corporation at the time of appointment to the
 1556 committee; one representative appointed by the Florida
 1557 Association of Realtors; and one representative appointed by the
 1558 Florida Bankers Association. All members shall be appointed to
 1559 3-year terms and may serve for consecutive terms.

1560 (II) The committee shall report to the corporation at each
 1561 board meeting on insurance market issues which may include rates
 1562 and rate competition with the voluntary market; service,
 1563 including policy issuance, claims processing, and general
 1564 responsiveness to policyholders, applicants, and agents; and
 1565 matters relating to depopulation.

1566 5. Must provide a procedure for determining the eligibility

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1567 of a risk for coverage, as follows:

1568 a. Subject to s. 627.3517, with respect to personal lines
 1569 residential risks, if the risk is offered coverage from an
 1570 authorized insurer at the insurer's approved rate under a
 1571 standard policy including wind coverage or, if consistent with
 1572 the insurer's underwriting rules as filed with the office, a
 1573 basic policy including wind coverage, for a new application to
 1574 the corporation for coverage, the risk is not eligible for any
 1575 policy issued by the corporation unless the premium for coverage
 1576 from the authorized insurer is more than 15 percent greater than
 1577 the premium for comparable coverage from the corporation.
 1578 Whenever an offer of coverage for a personal lines residential
 1579 risk is received for a policyholder of the corporation at
 1580 renewal from an authorized insurer, if the offer is equal to or
 1581 less than the corporation's renewal premium for comparable
 1582 coverage, the risk is not eligible for coverage with the
 1583 corporation. If the risk is not able to obtain such offer, the
 1584 risk is eligible for a standard policy including wind coverage
 1585 or a basic policy including wind coverage issued by the
 1586 corporation; however, if the risk could not be insured under a
 1587 standard policy including wind coverage regardless of market
 1588 conditions, the risk is eligible for a basic policy including
 1589 wind coverage unless rejected under subparagraph 8. However, a
 1590 policyholder removed from the corporation through an assumption
 1591 agreement remains eligible for coverage from the corporation
 1592 until the end of the assumption period. The corporation shall
 1593 determine the type of policy to be provided on the basis of
 1594 objective standards specified in the underwriting manual and
 1595 based on generally accepted underwriting practices.

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1596 (I) If the risk accepts an offer of coverage through the
 1597 market assistance plan or through a mechanism established by the
 1598 corporation other than a plan established by s. 627.3518, before
 1599 a policy is issued to the risk by the corporation or during the
 1600 first 30 days of coverage by the corporation, and the producing
 1601 agent who submitted the application to the plan or to the
 1602 corporation is not currently appointed by the insurer, the
 1603 insurer shall:

1604 (A) Pay to the producing agent of record of the policy for
 1605 the first year, an amount that is the greater of the insurer's
 1606 usual and customary commission for the type of policy written or
 1607 a fee equal to the usual and customary commission of the
 1608 corporation; or

1609 (B) Offer to allow the producing agent of record of the
 1610 policy to continue servicing the policy for at least 1 year and
 1611 offer to pay the agent the greater of the insurer's or the
 1612 corporation's usual and customary commission for the type of
 1613 policy written.

1614 If the producing agent is unwilling or unable to accept
 1615 appointment, the new insurer shall pay the agent in accordance
 1616 with sub-sub-sub-subparagraph (A).

1618 (II) If the corporation enters into a contractual agreement
 1619 for a take-out plan, the producing agent of record of the
 1620 corporation policy is entitled to retain any unearned commission
 1621 on the policy, and the insurer shall:

1622 (A) Pay to the producing agent of record, for the first
 1623 year, an amount that is the greater of the insurer's usual and
 1624 customary commission for the type of policy written or a fee

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1625 equal to the usual and customary commission of the corporation;
 1626 or

1627 (B) Offer to allow the producing agent of record to
 1628 continue servicing the policy for at least 1 year and offer to
 1629 pay the agent the greater of the insurer's or the corporation's
 1630 usual and customary commission for the type of policy written.
 1631

1632 If the producing agent is unwilling or unable to accept
 1633 appointment, the new insurer shall pay the agent in accordance
 1634 with sub-sub-sub-subparagraph (A).

1635 b. With respect to commercial lines residential risks, for
 1636 a new application to the corporation for coverage, if the risk
 1637 is offered coverage under a policy including wind coverage from
 1638 an authorized insurer at its approved rate, the risk is not
 1639 eligible for a policy issued by the corporation unless the
 1640 premium for coverage from the authorized insurer is more than 15
 1641 percent greater than the premium for comparable coverage from
 1642 the corporation. Whenever an offer of coverage for a commercial
 1643 lines residential risk is received for a policyholder of the
 1644 corporation at renewal from an authorized insurer, if the offer
 1645 is equal to or less than the corporation's renewal premium for
 1646 comparable coverage, the risk is not eligible for coverage with
 1647 the corporation. If the risk is not able to obtain any such
 1648 offer, the risk is eligible for a policy including wind coverage
 1649 issued by the corporation. However, a policyholder removed from
 1650 the corporation through an assumption agreement remains eligible
 1651 for coverage from the corporation until the end of the
 1652 assumption period.

1653 (I) If the risk accepts an offer of coverage through the

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1654 market assistance plan or through a mechanism established by the
 1655 corporation other than a plan established by s. 627.3518, before
 1656 a policy is issued to the risk by the corporation or during the
 1657 first 30 days of coverage by the corporation, and the producing
 1658 agent who submitted the application to the plan or the
 1659 corporation is not currently appointed by the insurer, the
 1660 insurer shall:

1661 (A) Pay to the producing agent of record of the policy, for
 1662 the first year, an amount that is the greater of the insurer's
 1663 usual and customary commission for the type of policy written or
 1664 a fee equal to the usual and customary commission of the
 1665 corporation; or

1666 (B) Offer to allow the producing agent of record of the
 1667 policy to continue servicing the policy for at least 1 year and
 1668 offer to pay the agent the greater of the insurer's or the
 1669 corporation's usual and customary commission for the type of
 1670 policy written.

1671 If the producing agent is unwilling or unable to accept
 1672 appointment, the new insurer shall pay the agent in accordance
 1673 with sub-sub-sub-subparagraph (A).

1674 (II) If the corporation enters into a contractual agreement
 1675 for a take-out plan, the producing agent of record of the
 1676 corporation policy is entitled to retain any unearned commission
 1677 on the policy, and the insurer shall:

1678 (A) Pay to the producing agent of record, for the first
 1679 year, an amount that is the greater of the insurer's usual and
 1680 customary commission for the type of policy written or a fee
 1681 equal to the usual and customary commission of the corporation;
 1682

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1683 or

1684 (B) Offer to allow the producing agent of record to
 1685 continue servicing the policy for at least 1 year and offer to
 1686 pay the agent the greater of the insurer's or the corporation's
 1687 usual and customary commission for the type of policy written.
 1688

1689 If the producing agent is unwilling or unable to accept
 1690 appointment, the new insurer shall pay the agent in accordance
 1691 with sub-sub-sub-subparagraph (A).

1692 c. For purposes of determining comparable coverage under
 1693 sub-subparagraphs a. and b., the comparison must be based on
 1694 those forms and coverages that are reasonably comparable. The
 1695 corporation may rely on a determination of comparable coverage
 1696 and premium made by the producing agent who submits the
 1697 application to the corporation, made in the agent's capacity as
 1698 the corporation's agent. A comparison may be made solely of the
 1699 premium with respect to the main building or structure only on
 1700 the following basis: the same coverage A or other building
 1701 limits; the same percentage hurricane deductible that applies on
 1702 an annual basis or that applies to each hurricane for commercial
 1703 residential property; the same percentage of ordinance and law
 1704 coverage, if the same limit is offered by both the corporation
 1705 and the authorized insurer; the same mitigation credits, to the
 1706 extent the same types of credits are offered both by the
 1707 corporation and the authorized insurer; the same method for loss
 1708 payment, such as replacement cost or actual cash value, if the
 1709 same method is offered both by the corporation and the
 1710 authorized insurer in accordance with underwriting rules; and
 1711 any other form or coverage that is reasonably comparable as

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1712 determined by the board. If an application is submitted to the
 1713 corporation for wind-only coverage in the coastal account, the
 1714 premium for the corporation's wind-only policy plus the premium
 1715 for the ex-wind policy that is offered by an authorized insurer
 1716 to the applicant must be compared to the premium for multiperil
 1717 coverage offered by an authorized insurer, subject to the
 1718 standards for comparison specified in this subparagraph. If the
 1719 corporation or the applicant requests from the authorized
 1720 insurer a breakdown of the premium of the offer by types of
 1721 coverage so that a comparison may be made by the corporation or
 1722 its agent and the authorized insurer refuses or is unable to
 1723 provide such information, the corporation may treat the offer as
 1724 not being an offer of coverage from an authorized insurer at the
 1725 insurer's approved rate.

1726 6. Must include rules for classifications of risks and
 1727 rates.

1728 7. Must provide that if premium and investment income for
 1729 an account attributable to a particular calendar year are in
 1730 excess of projected losses and expenses for the account
 1731 attributable to that year, such excess shall be held in surplus
 1732 in the account. Such surplus must be available to defray
 1733 deficits in that account as to future years and used for that
 1734 purpose before assessing assessable insurers and assessable
 1735 insureds as to any calendar year.

1736 8. Must provide objective criteria and procedures to be
 1737 uniformly applied to all applicants in determining whether an
 1738 individual risk is so hazardous as to be uninsurable. In making
 1739 this determination and in establishing the criteria and
 1740 procedures, the following must be considered:

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1741 a. Whether the likelihood of a loss for the individual risk
1742 is substantially higher than for other risks of the same class;
1743 and

1744 b. Whether the uncertainty associated with the individual
1745 risk is such that an appropriate premium cannot be determined.
1746

1747 The acceptance or rejection of a risk by the corporation shall
1748 be construed as the private placement of insurance, and the
1749 provisions of chapter 120 do not apply.

1750 9. Must provide that the corporation make its best efforts
1751 to procure catastrophe reinsurance at reasonable rates, to cover
1752 its projected 100-year probable maximum loss as determined by
1753 the board of governors.

1754 10. The policies issued by the corporation must provide
1755 that if the corporation or the market assistance plan obtains an
1756 offer from an authorized insurer to cover the risk at its
1757 approved rates, the risk is no longer eligible for renewal
1758 through the corporation, except as otherwise provided in this
1759 subsection.

1760 11. Corporation policies and applications must include a
1761 notice that the corporation policy could, under this section, be
1762 replaced with a policy issued by an authorized insurer which
1763 does not provide coverage identical to the coverage provided by
1764 the corporation. The notice must also specify that acceptance of
1765 corporation coverage creates a conclusive presumption that the
1766 applicant or policyholder is aware of this potential.

1767 12. May establish, subject to approval by the office,
1768 different eligibility requirements and operational procedures
1769 for any line or type of coverage for any specified county or

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1770 area if the board determines that such changes are justified due
1771 to the voluntary market being sufficiently stable and
1772 competitive in such area or for such line or type of coverage
1773 and that consumers who, in good faith, are unable to obtain
1774 insurance through the voluntary market through ordinary methods
1775 continue to have access to coverage from the corporation. If
1776 coverage is sought in connection with a real property transfer,
1777 the requirements and procedures may not provide an effective
1778 date of coverage later than the date of the closing of the
1779 transfer as established by the transferor, the transferee, and,
1780 if applicable, the lender.

1781 13. Must provide that, with respect to the coastal account,
1782 any assessable insurer with a surplus as to policyholders of \$25
1783 million or less writing 25 percent or more of its total
1784 countrywide property insurance premiums in this state may
1785 petition the office, within the first 90 days of each calendar
1786 year, to qualify as a limited apportionment company. A regular
1787 assessment levied by the corporation on a limited apportionment
1788 company for a deficit incurred by the corporation for the
1789 coastal account may be paid to the corporation on a monthly
1790 basis as the assessments are collected by the limited
1791 apportionment company from its insureds, but a limited
1792 apportionment company must begin collecting the regular
1793 assessments not later than 90 days after the regular assessments
1794 are levied by the corporation, and the regular assessments must
1795 be paid in full within 15 months after being levied by the
1796 corporation. A limited apportionment company shall collect from
1797 its policyholders any emergency assessment imposed under sub-
1798 subparagraph (b)3.d. The plan must provide that, if the office

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1799 determines that any regular assessment will result in an
 1800 impairment of the surplus of a limited apportionment company,
 1801 the office may direct that all or part of such assessment be
 1802 deferred as provided in subparagraph (q)4. However, an emergency
 1803 assessment to be collected from policyholders under sub-
 1804 subparagraph (b)3.d. may not be limited or deferred.

1805 14. Must provide that the corporation appoint as its
 1806 licensed agents only those agents who throughout such
 1807 appointments also hold an appointment as defined in s. 626.015
 1808 ~~s. 626.015(3)~~ by an insurer who is authorized to write and is
 1809 actually writing or renewing personal lines residential property
 1810 coverage, commercial residential property coverage, or
 1811 commercial nonresidential property coverage within the state.

1812 15. Must provide a premium payment plan option to its
 1813 policyholders which, at a minimum, allows for quarterly and
 1814 semiannual payment of premiums. A monthly payment plan may, but
 1815 is not required to, be offered.

1816 16. Must limit coverage on mobile homes or manufactured
 1817 homes built before 1994 to actual cash value of the dwelling
 1818 rather than replacement costs of the dwelling.

1819 17. Must provide coverage for manufactured or mobile home
 1820 dwellings. Such coverage must also include the following
 1821 attached structures:

1822 a. Screened enclosures that are aluminum framed or screened
 1823 enclosures that are not covered by the same or substantially the
 1824 same materials as those of the primary dwelling;

1825 b. Carports that are aluminum or carports that are not
 1826 covered by the same or substantially the same materials as those
 1827 of the primary dwelling; and

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1828 c. Patios that have a roof covering that is constructed of
 1829 materials that are not the same or substantially the same
 1830 materials as those of the primary dwelling.
 1831

1832 The corporation shall make available a policy for mobile homes
 1833 or manufactured homes for a minimum insured value of at least
 1834 \$3,000.

1835 18. May provide such limits of coverage as the board
 1836 determines, consistent with the requirements of this subsection.

1837 19. May require commercial property to meet specified
 1838 hurricane mitigation construction features as a condition of
 1839 eligibility for coverage.

1840 20. Must provide that new or renewal policies issued by the
 1841 corporation on or after January 1, 2012, which cover sinkhole
 1842 loss do not include coverage for any loss to appurtenant
 1843 structures, driveways, sidewalks, decks, or patios that are
 1844 directly or indirectly caused by sinkhole activity. The
 1845 corporation shall exclude such coverage using a notice of
 1846 coverage change, which may be included with the policy renewal,
 1847 and not by issuance of a notice of nonrenewal of the excluded
 1848 coverage upon renewal of the current policy.

1849 21. As of January 1, 2012, must require that the agent
 1850 obtain from an applicant for coverage from the corporation an
 1851 acknowledgment signed by the applicant, which includes, at a
 1852 minimum, the following statement:

1853

1854 ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
 1855 AND ASSESSMENT LIABILITY:

1856

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1857 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE
 1858 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A
 1859 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,
 1860 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND
 1861 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE
 1862 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT
 1863 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA
 1864 LEGISLATURE.

1865 2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER
 1866 SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM,
 1867 BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO
 1868 BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN
 1869 PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE
 1870 WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES
 1871 ARE REGULATED AND APPROVED BY THE STATE.

1872 3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY
 1873 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER
 1874 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE
 1875 FLORIDA LEGISLATURE.

1876 4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE
 1877 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE
 1878 STATE OF FLORIDA.

1879
 1880 a. The corporation shall maintain, in electronic format or
 1881 otherwise, a copy of the applicant's signed acknowledgment and
 1882 provide a copy of the statement to the policyholder as part of
 1883 the first renewal after the effective date of this subparagraph.

1884 b. The signed acknowledgment form creates a conclusive
 1885 presumption that the policyholder understood and accepted his or

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1886 her potential surcharge and assessment liability as a
 1887 policyholder of the corporation.

1888 Section 35. This act shall take effect July 1, 2017.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
22nd District

COMMITTEES:

Appropriations Subcommittee on Finance and Tax,
Chair
Appropriations Subcommittee on Health and
Human Services, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic
Security

March 28, 2017

The Honorable Jack Latvala
Senate Committee on Appropriations, Chair
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Latvala:

I respectfully request that the following bills be placed on the next committee agenda:

- CS/SB 370, related to *Florida Wing of the Civil Air Patrol*; the House companion CS/HB 635 is in its final committee.
- SB 514, related to *Fees of the Department of Business and Professional Regulation (if received)*; the House companion HB 741 is on the agenda of its final committee.
- CS/SB 880, related to *Government Accountability*; the House companion CS/CS/CS/HB 479 is on the House Special Order Calendar.
- CS/SB 986, related to *Department of Financial Services (if received)*; the House companion CS/HB 925 is in its final committee.
- SB 1156, related to *Corporate Income Tax*.

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".

Kelli Stargel
State Senator, District 22

Cc: Mike Hansen/ Staff Director
Alicia Weiss/ AA

REPLY TO:

- ☐ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- ☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-20-17

Meeting Date

SB 986

Bill Number (if applicable)

Topic SB 986

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Legislative Affairs Director

Address 400 N. Monroe St
Street

Phone 850-413-2863

Tallahassee
City

FL
State

32399
Zip

Email Elizabeth.Boyd@myfloridaleg.com

Speaking: For Against Information

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

Representing CFO Atwater

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 Appropriations

BILL: SB 1222

INTRODUCER: Senator Bradley

SUBJECT: School Grades

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Androff</u>	<u>Graf</u>	<u>ED</u>	Favorable
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	Recommend: Favorable
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	Favorable

I. Summary:

SB 1222 reduces the percentage of students required to be scheduled for assignment to a specific school to establish a school feeder pattern. With this school feeder pattern established, the K-3 school, if ungraded on its own accord, will receive the school grade assigned to the graded school.

Although the bill has no direct impact on state expenditures, the K-3 schools receiving the school grade may be eligible to receive funding through the School Recognition Program.

The bill takes effect July 1, 2017.

II. Present Situation:

School grades provide an easily understandable way to measure the performance of a school.¹ Parents and the general public can use the school grade and its components to understand how well each school is serving its students.²

School Grades in Florida

Schools are graded using one of the following grades:³

- “A,” for schools making excellent progress – 62% or higher of total points.
- “B,” for schools making above average progress – 54% to 61% of total points.
- “C,” for schools making satisfactory progress – 41% to 53% of total points.
- “D,” for schools making less than satisfactory progress – 32% to 40% of total points.

¹ Florida Department of Education, *2016 Preliminary School Grades Overview*, available at <http://schoolgrades.fldoe.org/pdf/1516/SchoolGradesOverview16.pdf>.

² *Id.*

³ Section 1008.34(2), F.S.; Rule 6A-1.09981, F.A.C.

- “F,” for schools failing to make adequate progress – 31% or less of total points.

The State Board of Education (SBE) must periodically review the school grading scale to determine if the scale should be adjusted upward to meet raised expectations and encourage increased student performance. The SBE must notify the public of any adjustment, and explain the reasons for such adjustment and the impact of the adjustment on school grades.⁴

Elementary School Grade Model (700 Points) ⁵		
English Language Arts (ELA)	Math	Science
Achievement (0% - 100%)	Achievement (0% - 100%)	Achievement (0% - 100%)
Learning Gains (0% - 100%)	Learning Gains (0% - 100%)	
Learning Gains of Low 25% (0% - 100%)	Learning Gains of Low 25% (0% - 100%)	

A school’s grade must include only those components for which at least 10 students have complete data. If a school does not meet the 10-student threshold for one component, it will receive a school grade based only on the remaining components.⁶

Feeder Pattern

A school that serves any combination of K-3 students and that does not receive a school grade as a result of its students not being tested, receives the school grade designation of a K-3 feeder pattern school identified by the Florida Department of Education (DOE) and verified by the district.⁷ A school feeder pattern exists if at least 60 percent of the students are scheduled to be assigned to the graded school.⁸

Feeder school status is first determined by identifying K-3 schools (schools that only serve students through grade 3) that have 60 percent of their students matriculate to a single school the following year.⁹ This is determined by identifying the actual school of enrollment. The DOE does not have information on the schools that the students are scheduled to attend.¹⁰ Once the DOE identifies the feeder patterns, this information is sent to the districts for review and input. Districts may provide additional information that could result in a change to the feeder school list.¹¹ If a K-3 school receives a school grade, the school is removed from the feeder school list.¹²

⁴ Section 1008.34(3)(c)1., F.S.

⁵ Florida Department of Education, *2016 Preliminary School Grades Overview*, available at <http://schoolgrades.fldoe.org/pdf/1516/SchoolGradesOverview16.pdf>.

⁶ *Id.* at (3)(a).

⁷ Section 1008.34(3)(a)2., F.S.

⁸ *Id.*

⁹ Florida Department of Education, *HB 781 Analysis* (2017), at 2. HB 781 is substantively the same as SB 1222.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

During the 2015-2016 school year, there were 21 schools designated as K-3 feeder schools. Ten of these schools received Florida School Recognition Program Funds.¹³

The School Recognition Program was established to financially reward high-performance schools based on school grades.¹⁴ Under the program, schools that earn a school grade of “A,” improve at least one letter grade, or improve two or more letter grades and maintain the grade the following school year are eligible for an award as appropriated by the Legislature annually.¹⁵ SB 2500, the proposed Senate General Appropriations Act for the 2017-2018 Fiscal Year, appropriates \$134.6 million for recognized schools at an amount of up to \$100 per student.¹⁶ School recognition awards may be used for nonrecurring bonuses to school faculty and staff, nonrecurring expenditures for educational equipment or materials, or for temporary personnel to assist the school in maintaining or improving student performance.¹⁷

III. Effect of Proposed Changes:

This bill reduces the percentage of students that must be scheduled to be assigned to another school from 60 percent to a majority (over 50 percent).

With this change, a K-3 school that does not receive a school grade itself will be assigned the school grade of a graded school for which it is designated to be a feeder pattern school. For example, if 51 percent of a K-3 school’s population is scheduled to attend a specific graded school, the K-3 school will be designated as a K-3 feeder pattern school and will receive the school grade of the graded school. A designated feeder pattern school may be eligible to receive Florida School Recognition Program funding. Additionally, a charter school that is an expanded feeder chain of a charter school within the same school district that is currently receiving charter school capital outlay funds may be eligible to receive a charter school capital outlay funding allocation.¹⁸

The bill may increase the number of schools eligible to receive a school grade through the school grade feeder designation. In turn, this could increase the number of K-3 schools eligible to receive Florida School Recognition Program funding.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹³ Florida Department of Education, *HB 781 Analysis* (2017), at 2. HB 781 is substantively the same as SB 1222.

¹⁴ Florida Department of Education, *Evaluation and Reporting, Florida School Recognition Program, Frequently Asked Questions*, <http://www.fldoe.org/accountability/accountability-reporting/fl-school-recognition-program/FAQ.stml> (last visited Mar. 24, 2017).

¹⁵ Section 1008.36, F.S.

¹⁶ Specific Appropriation 9, Senate Bill 2500

¹⁷ Section 1008.36, F.S.

¹⁸ See s. 1013.62(1)(a)1.c., F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The revision to the school feeder pattern requirement may result in additional prekindergarten through grade 3 schools being designated as feeder schools, which may allow the schools to qualify for the Florida School Recognition Program. According to the Florida Department of Education, in 2015-2016, ten of the schools that qualified for the Florida School Recognition Program were designated as feeder schools, receiving a total of \$515,756, or an average of \$51,576 per school.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1008.34 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.

¹⁹ Florida Department of Education, *HB 781 Analysis* (2017), at 4. HB 781 is substantively the same as SB 1222.

B. Amendments:

None.

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

By Senator Bradley

5-01028-17

20171222__

1 A bill to be entitled
 2 An act relating to school grades; amending s. 1008.34,
 3 F.S.; providing that a school exhibits a feeder
 4 pattern for the purpose of designating school grades
 5 if at least a majority of its students are scheduled
 6 to be assigned to the graded school; providing an
 7 effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Paragraph (a) of subsection (3) of section
 12 1008.34, Florida Statutes, is amended to read:
 13 1008.34 School grading system; school report cards;
 14 district grade.—
 15 (3) DESIGNATION OF SCHOOL GRADES.—
 16 (a) Each school must assess at least 95 percent of its
 17 eligible students, except as provided under s. 1008.341 for
 18 alternative schools. Each school shall receive a school grade
 19 based on the school's performance on the components listed in
 20 subparagraphs (b)1. and 2. If a school does not have at least 10
 21 students with complete data for one or more of the components
 22 listed in subparagraphs (b)1. and 2., those components may not
 23 be used in calculating the school's grade.
 24 1. An alternative school may choose to receive a school
 25 grade under this section or a school improvement rating under s.
 26 1008.341. For charter schools that meet the definition of an
 27 alternative school pursuant to State Board of Education rule,
 28 the decision to receive a school grade is the decision of the
 29 charter school governing board.

Page 1 of 2

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

5-01028-17

20171222__

30 2. A school that serves any combination of students in
 31 kindergarten through grade 3 that does not receive a school
 32 grade because its students are not tested and included in the
 33 school grading system shall receive the school grade designation
 34 of a K-3 feeder pattern school identified by the Department of
 35 Education and verified by the school district. A school feeder
 36 pattern exists if at least a majority ~~60 percent~~ of the students
 37 in the school serving a combination of students in kindergarten
 38 through grade 3 are scheduled to be assigned to the graded
 39 school.
 40 3. If a collocated school does not earn a school grade or
 41 school improvement rating for the performance of its students,
 42 the student performance data of all schools operating at the
 43 same facility must be aggregated to develop a school grade that
 44 will be assigned to all schools at that location. A collocated
 45 school is a school that has its own unique master school
 46 identification number, provides for the education of each of its
 47 enrolled students, and operates at the same facility as another
 48 school that has its own unique master school identification
 49 number and provides for the education of each of its enrolled
 50 students.
 51 Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 17, 2017

I respectfully request that **Senate Bill # 1222: School Grades and 1626: Department of Legal Affairs**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley", written over a horizontal line.

Senator Rob Bradley
Florida Senate, District 5

THE FLORIDA SENATE
APPEARANCE RECORD

4.20.17

Meeting Date

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

1222

Bill Number (if applicable)

Topic School Grades

Amendment Barcode (if applicable)

Name Debbie Mortham

Job Title Advocacy Director

Address 215 S Monroe
Street

Phone _____

TH 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 Foundation for Florida's Future

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)

4/20/2017

Meeting Date

SB1222

Bill Number (if applicable)

Topic School Grades

Amendment Barcode (if applicable)

Name Bob Cerra

Job Title Governmental Consultant

Address 206 South Monroe Street, #104

Phone 850-222-4428

Street

Tallahassee FL 32301

City

State

Zip

Email bobcerra@comcast.net

Speaking: For Against Information

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

Representing North East Florida Educational Consortium

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 Appropriations

BILL: CS/CS/SB 1338

INTRODUCER: Appropriations Committee; Environmental Preservation and Conservation Committee;
and Senator Book

SUBJECT: Vessels

DATE: April 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Istler</u>	<u>Rogers</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEN</u>	<u>Recommend: Favorable</u>
3.	<u>Reagan</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1338 implements many of the findings and recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) in its report on the pilot program relating to the anchoring or mooring of vessels outside public mooring fields. The bill addresses issues relating to:

- Derelict vessels by:
 - Providing that a vessel is at risk of becoming derelict if an owner or operator of a vessel cannot demonstrate within 72 hours after notification by a law enforcement officer that the vessel has an effective means of propulsion or provide documentation of having ordered the necessary parts for vessel repair;
 - Elevating the civil penalties for having an expired vessel registration longer than six months;
 - Prohibiting the Department of Highway Safety and Motor Vehicles from issuing a certificate of title to any applicant for any vessel that has been deemed derelict by a law enforcement officer until such vessel is no longer deemed a derelict vessel; and
 - Exempting law enforcement officers who post a notice on a derelict vessel which he or she ascertains as lost or abandoned property from the additional requirement that such notice be sent by certified mail to the owner of the property when the law enforcement officer has given such owner notice of a violation of derelict vessels and issued him or her a citation for such violation.

- Anchoring or mooring in certain areas by prohibiting vessels or floating structures from anchoring or mooring within:
 - 150 feet of any vessel launching or loading facility;
 - 100 feet of public mooring field boundaries; or
 - 300 feet of a superyacht repair facility.
- Local governmental authority by:
 - Amending the definition of the term “live-aboard vessel” to revise local governmental authority relating to the anchoring and mooring of vessels;
 - Authorizing local governments to enact and enforce regulations that require owners or operators of vessels or floating structures subject to marine sanitation requirements to provide proof of proper sewage disposal if such vessel has been anchored or moored for 10 consecutive days within the marked boundaries of permitted mooring fields or federally designated no discharge zones, provided the FWC has determined that adequate pumpout services are provided by such local government; and
 - Authorizing local governments to enact and enforce regulations that allow the local government to remove a vessel affixed to a public dock within its jurisdiction that has been deemed abandoned or lost property.

The bill allows that private residential multifamily docks that were grandfathered-in to use sovereignty submerged lands to exceed the 1:1 ratio for number of moored boats to the number of units within a private multifamily development.

The bill authorizes the FWC to establish boating restricted areas upon request of a private property owner of submerged lands that are adjacent to Outstanding Florida Waters or an aquatic preserve for the sole purpose of protecting any seagrass and contiguous seagrass habitat within their property boundaries from seagrass scarring due to propeller dredging.

The bill may have an indeterminate fiscal impact on state and local governments.

II. Present Situation:

Anchoring or mooring refers to a boater’s practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel.¹ Mooring is accomplished through the utilization of moorings permanently affixed to the bottom. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.²

The anchoring of vessels has created conflicts in some areas of the state related to the use and enjoyment of the waters for many years. These issues include, but are not limited to:

- The locations where anchored vessels accumulate;
- Unattended vessels;
- Anchored vessels that are dragging anchor or not showing proper lighting;

¹ Section 327.02, F.S., defines the term “vessel” to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

² Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012) available at <http://nsgl.gso.uri.edu/flsgp/flsgpt12001.pdf> (last visited Mar. 15, 2017).

- Vessels that are not maintained properly;
- Vessels that become derelict;
- Interpretation of state laws leading to inconsistent regulation of anchoring on state waters and confusion among the boating community; and
- Questions about local governmental authority to regulate anchoring.³

Lease of Sovereignty Submerged Lands

The Board of Trustees of the Internal Improvement Trust Fund (BOT) is responsible for the administration and disposition of the state's sovereignty submerged lands.⁴ The BOT is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.⁵ Waterfront landowners must receive the BOT's authorization to build docks and related structures on sovereignty submerged lands. The Department of Environmental Protection (DEP) administers all staff functions on the BOT's behalf.⁶

Florida recognizes riparian rights for landowners with waterfront property bordering navigable waters, which include the rights of ingress, egress, boating, bathing, fishing, and others as defined by law.⁷ Riparian landowners must obtain a sovereignty submerged lands authorization in the form of a letter of consent, consent by rule, or a lease prior to installation and maintenance of docks, piers, and boat ramps on sovereignty submerged land.

A preempted area is the area of sovereignty submerged lands from which any traditional public uses have been or will be excluded by an activity, such as the area occupied by docks, piers, and other structures; the area between a dock and the shoreline where access is not allowed, between docks, or areas where mooring routinely occurs that are no longer reasonably accessible to the general public; permanent mooring areas not associated with docks; and swimming areas enclosed by nets, buoys, or similar marking systems.⁸ The preemption ratio is the ratio of the preempted area in square feet to the number of linear feet of shoreline owned by the applicant.⁹ A dock that preempts more than the 10:1 preemption ratio requires a lease.

A lease agreement between the state and the property owner transfers the use, possession, and control of sovereignty submerged lands to the property owner for up to 10 years. The annual lease fees for a standard term lease are calculated through a formula based on annual income, square footage, or a minimum annual fee. Extended term leases are available, under limited conditions, for up to 25 years. Annual lease fees for extended term leases are calculated in the same fashion as standard lease fees but with a multiplier for the term in years.

³ Fish and Wildlife Conservation Commission (FWC), *Anchoring and Mooring Pilot Program Report of Findings and Recommendations*, 6 (Dec. 21, 2016), available at <http://myfwc.com/media/4126646/anchoringandmooringpilotprogramreport122116.pdf> (last visited Mar. 15, 2017).

⁴ Section 253.03(8)(b), F.S., defines submerged lands as publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state.

⁵ Section 253.02(1), F.S.

⁶ Section 253.03, F.S.

⁷ Section 253.141(1), F.S.

⁸ Fla. Admin. R. 18-21.003

⁹ Fla. Admin. R. 18-21.005.

A private residential multi-family dock that is designed to moor up to the number of units within the multi-family development is not required to pay a lease fee if the preempted area is less than the 10:1 preempted ratio.¹⁰ When the lease requirements were first adopted, a grandfathering-in program was established, which postponed the requirement for leases and payment of lease fees until January 1, 1998, provided the facility was registered by September 30, 1984.¹¹ Because many facilities missed the original deadline, a second grandfathering program was adopted in 1990, which allowed unregistered facilities to apply for a lease under the program by April 1, 1991.¹²

State Regulation of the Anchoring or Mooring of Vessels

The BOT is authorized to adopt rules governing all uses of sovereignty submerged lands including rules for anchoring, mooring, or otherwise attaching to the bottom, the establishment of anchorages, the discharge of sewage, pump-out requirements, and facilities associated with anchorages.¹³ Such rules must control the use of sovereignty submerged lands as a place of business or residence but are prohibited from interfering with commerce or the transitory operation of vessels through navigable water.¹⁴ The BOT has yet to adopt rules relating to the anchoring of vessels on the waters of the state.

Section 327.44, F.S., prohibits a person from anchoring a vessel, except in cases of emergency, in a manner that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. Anchoring under bridges or in, or adjacent to, heavily traveled channels constitutes interference, if unreasonable under the prevailing circumstances.¹⁵ Interference with navigation is a noncriminal infraction, punishable by a civil penalty of \$50.¹⁶

The FWC and other law enforcement agencies are authorized to relocate or remove a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The FWC or any law enforcement agency that relocates or removes a vessel under these circumstances is to be held harmless for all damages to the vessel resulting from the relocation or removal unless the damage results from gross negligence or willful misconduct.¹⁷ The costs to relocate or remove a vessel under these circumstances are recoverable against the vessel owner.¹⁸

Section 327.4108, F.S., prohibits, with specified exceptions, the anchoring of a vessel between one-half hour after sunset and one-half hour before sunrise in the following designated anchoring limitation areas:

¹⁰ Section 253.0374, F.S. See also DEP, *Construction Criteria for Docks, Piers, and Marinas-Not in an Aquatic Preserve*, http://publicfiles.dep.state.fl.us/dworm/slerp/erphelp/mergedProjects/docksguide/Not_in_AP/Private_Multi_Family_or_Multi_Slip.htm (last visited Mar. 23, 2017).

¹¹ R. Steven Lewis, Matthew Butler, and Timothy Rach, *Special Permitting Considerations for Sovereign Lands and Aquatic Preserves*, 19 (July 2014) available at <http://floridaenet.com/wp-content/uploads/2015/10/Special-Permitting-Considerations-for-Sovereign-Lands-and-Aquatic-Preserves-July-2014-00354627xBA9D6.pdf> (last visited Mar. 23, 2017).

¹² *Id.*

¹³ Section 253.03(7), F.S.

¹⁴ See Fla. Admin. Code ch. 18-21.

¹⁵ Section 327.44(2), F.S.

¹⁶ Section 327.73, F.S.

¹⁷ Section 327.44(3), F.S.

¹⁸ Section 327.44(5), F.S.

- The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.
- Sunset Lake in Miami-Dade County.
- The sections of Biscayne Bay in Miami-Dade County lying between:
 - Rivo Alto Island and Di Lido Island;
 - San Marino Island and San Marco Island; or
 - San Marco Island and Biscayne Island.¹⁹

This prohibition expires upon the Legislature's adoption of the FWC's recommendations for the regulation of mooring vessels outside public mooring fields developed under the pilot program.²⁰

Local Regulation of the Anchoring or Mooring of Vessels

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.²¹ Mooring fields are required to be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters which the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.²²

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures²³ or live-aboard vessels²⁴ within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.²⁵ However, local governments are prohibited from enacting, continuing in effect, or enforcing any ordinance or local regulation that regulates the anchoring of vessels, other than live-aboard vessels, outside the marked boundaries of permitted mooring fields.²⁶ Local governments are only authorized to enact and enforce regulations regarding the mooring or anchoring of vessels that are located within marked boundaries of a mooring field.²⁷

¹⁹ Section 327.4108, F.S.

²⁰ Section 327.4108(7), F.S.

²¹ See s. 373.118, F.S. and Fla. Admin. Code R. 62-330.420(1).

²² See Fla. Admin. Code R. 62-330.420.

²³ Section 327.02, F.S., defines the term "floating structure" as a "floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes an entity used as a residence, place of business, or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such."

²⁴ Section 327.02, F.S., defines the term "live-aboard vessel" as "a vessel used solely as a residence and not for navigation; a vessel represented as a place of business or a professional or other commercial enterprise; or a vessel for which a declaration of domicile has been filed. The definition expressly excludes commercial fishing boats."

²⁵ Section 327.60(3), F.S.

²⁶ Section 327.60(2)(f), F.S.

²⁷ Section 327.60, F.S.

Derelict Vessels

A derelict vessel is a vessel that is left, stored, or abandoned:

- In a wrecked, junked, or substantially dismantled condition upon any public waters of this state;
- At a port in the state without the consent of the agency that has jurisdiction of the port; or
- Docked, grounded, or beached upon the property of another without the consent of the owner of the property.²⁸

It is unlawful to store, leave, or abandon a derelict vessel in Florida.²⁹ Those who are found in violation of this prohibition commit a first degree misdemeanor.³⁰ Additionally, s. 376.16, F.S., provides that a violation of derelict vessel laws also subjects the violator to a civil penalty of up to \$50,000 per violation.³¹ Each day during any portion of which the violation occurs constitutes a separate offense.³²

Removal of Derelict Vessels

Chapters 327 and 328, F.S., concerning vessel safety and vessel title certificates, liens, and registration, are enforced by the Division of Law Enforcement of the Florida Fish and Wildlife Conservation Commission (FWC) and its officers, and the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer as defined in s. 943.10, F.S.³³

Section 823.11, F.S., allows for the relocation or removal of a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons. The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner. A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.³⁴

According to the FWC, removal costs for derelict vessels are approximately \$350 to \$450 per foot of vessel length. However, a floating vessel may be towed to a boat ramp or hoist and pulled from the water at a much lower cost. Relocation may cost nothing if a law enforcement officer is

²⁸ Section 823.11(1)(b), F.S.

²⁹ Section 823.11(2), F.S.

³⁰ A first degree misdemeanor is punishable by a term of imprisonment of no more than one year and a fine of up to \$1,000.

³¹ Section 376.16(1), F.S.

³² *Id.*

³³ Section 943.10(1), F.S., defines the term “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.”

³⁴ Section 705.103(4), F.S.

able to tow it to a suitable location. Costs for professional towing services are approximately \$200 per hour.³⁵

The FWC maintains a statewide database of vessels that have been investigated by a law enforcement officer and deemed to be either derelict or at risk of becoming derelict. The database related to at-risk vessels is largely incomplete, because the current effort related to at-risk vessels is a voluntary, community-oriented policing effort. A total of 166 derelict vessels were removed by local governments in 2014 at a cost of approximately \$665,500, or \$4,009 per vessel.³⁶

The FWC held six public meetings in 2015 to seek public input on the problem of derelict vessels and possible solutions. Participants were asked to respond to a survey to indicate their level of support for eight solutions to address problems related to derelict vessels. The concept of prohibiting a vessel at risk of becoming derelict from anchoring on Florida waters received 85.2 percent support from respondents.³⁷

At-risk vessels

In 2016, the legislature passed ch. 2016-108, Laws of Florida, to prohibit neglected vessels or those in deteriorating conditions from anchoring, mooring, or occupying the waters of the state.³⁸ A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor; or
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, or is listing due to water intrusion, or is sunk or partially sunk.³⁹

A violation for anchoring, mooring, or occupying a vessel at risk of becoming derelict on the waters of the state is a noncriminal infraction, for which the civil penalty is:

- Fifty dollars, for a first offense.
- One hundred dollars, for a second offense occurring 30 days or more after a first offense.
- Two hundred and fifty dollars, for a third or subsequent offense occurring 30 days or more after a previous offense.⁴⁰

Anchoring and Mooring Pilot Program

In 2009, the Legislature created the Anchoring and Mooring Pilot Program to explore options for local governments to regulate the anchoring and mooring of non-live-aboard vessels outside the

³⁵ FWC, *2016 Agency Bill Analysis for HB 7025*, (Jan. 6, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

³⁹ Section 327.4107, F.S.

⁴⁰ Section 327.40(1)(a)(a), F.S.

marked boundaries of public mooring fields.⁴¹ The pilot program is administered by the FWC in consultation with the DEP.⁴²

The following local governments were selected as participants in the pilot program and were authorized to regulate anchoring and mooring outside the marked boundaries of permitted mooring fields:

- The city of St. Augustine;
- The city of St. Petersburg;
- The city of Sarasota;
- Monroe County in partnership with the cities of Marathon and Key West; and
- Martin County in partnership with the city of Stuart.⁴³

The pilot program and the local government ordinances developed under the program are set to expire July 1, 2017, unless reenacted by the legislature.⁴⁴

The FWC's Anchoring and Mooring Pilot Program Findings and Recommendations Report

The FWC in 2016 published a report of its findings and recommendations upon completion of the pilot program.⁴⁵ The following recommendations were made based on lessons learned by the FWC through the individual pilot program participating local governments, public responses to surveys, and additional input from key stakeholders:

- Provide an allowance for a 300-foot buffer extending beyond mooring field boundaries within which anchoring is prohibited, to further protect the safety of mooring field users;
- Retain state authority to regulate the anchoring of vessels in the state or, if the state chooses to grant such authority to local governments, restrict such authority to counties in order to minimize confusion among boaters;
- Quantify the economic benefits and document the environmental benefits of mooring fields;
- Establish anchoring limited areas through a universal, statewide prohibition against allowing an anchored vessel to come within 150 feet of any marina, boat ramp, or other vessel launching and loading facility; and
- Require certain vessels within specified areas of Monroe County waters to demonstrate proof of compliance with marine sanitation device pump out requirements.⁴⁶

Additionally, the FWC provided the following recommendations to prevent or remove derelict vessels on the waters of the state:

- Place a hold on titles of vessels deemed derelict;
- Limit who may renew a vessel registration;
- Increase the penalties for repeat violations of expired vessel registrations;
- Authorize an alternate means of notification to derelict vessel owners; and

⁴¹ Chapter 2009-86, s. 48, Laws of Fla.; s. 327.4105, F.S.

⁴² Section 327.4105, F.S.

⁴³ FWC, *Anchoring and Mooring Pilot Program Report of Findings and Recommendations*, 15 (Dec. 21, 2016).

⁴⁴ Section 327.4105(6), F.S. The pilot program was originally set to expire on July 1, 2014. However, the program was extended to provide more time to fully evaluate each pilot program location. See ch. 2014-136, s. 2, Laws of Fla.

⁴⁵ See FWC, *Anchoring and Mooring Pilot Program Report of Findings and Recommendations* (Dec. 21, 2016), for the full report.

⁴⁶ *Id.* at 50-54.

- Add another condition to the definition of the term “at-risk vessel” which would define a vessel that is incapable of effective navigation when the owner or operator cannot demonstrate an effective means of propulsion for the purpose of safe navigation as an at-risk vessel.⁴⁷

The FWC did not provide recommendations related to the following issues:

- Stored vessels;
- Inoperable vessels being used as residences;
- State-wide marine sanitation; and
- Setbacks from shorelines or private docks.⁴⁸

Boating Restricted Areas

Section 327.46, F.S., authorizes the FWC to establish restrictions on vessel speeds and vessel traffic on the waters of the state for any purpose necessary to protect the safety of the public, if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards. Boating-restricted areas are adopted by the FWC by rule.⁴⁹

Each boating-restricted area must be developed in consultation and coordination with the governing body of the county or municipality in which the boating-restricted area is located. When the boating-restricted area is to be on the navigable waters of the United States, the FWC must consult and coordinate with the United States Coast Guard and the United States Army Corps of Engineers.

Local governments are authorized to establish boating-restricted areas by ordinance within certain parameters.⁵⁰ Such ordinances must be reviewed by the FWC and determined necessary to protect public safety based upon substantial competent evidence.⁵¹ The following types of restrictions are authorized to be established:

- An ordinance establishing an idle speed, no wake⁵² boating-restricted area, if the area is:
 - Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width.
 - Within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.
 - Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width.
 - Within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.

⁴⁷ *Id.* at 52-54.

⁴⁸ *Id.* at 54-56.

⁴⁹ See Fla. Admin. Code Ch. 68D-24, for established boating restricted areas by county.

⁵⁰ Section 327.46(1)(b), F.S.

⁵¹ *Id.*

⁵² Fla. Admin. Code R. 68D-24.002, defines the term “Idle Speed No Wake” to mean that a vessel cannot proceed at a speed greater than necessary to maintain steerageway.

- Inside or within 300 feet of any lock structure.⁵³
- An ordinance establishing a slow speed, minimum wake⁵⁴ boating-restricted area if the area is:
 - Within 300 feet of any bridge fender system.
 - Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.
 - On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.
 - On a lake or pond of less than 10 acres in total surface area.⁵⁵
- An ordinance establishing a vessel-exclusion zone if the area is:
 - Designated as a public bathing beach or swim area.
 - Within 300 feet of a dam, spillway, or flood control structure.⁵⁶

The penalty for operating a vessel in a prohibited manner within a boating-restricted area that has been clearly marked by regulatory markers is a noncriminal infraction, punishable by a civil penalty of \$50.⁵⁷

Protection of Seagrass

According to s. 253.04, F.S., the state has a duty to conserve and improve state-owned lands and the products thereof, including the preservation and regeneration of seagrass. A person operating a vessel outside a lawfully marked channel in a careless manner that causes seagrass scarring in an aquatic preserve, except for Lake Jackson, Oklawaha River, Wekiva River, and Rainbow Springs aquatic preserves, commits a noncriminal infraction punishable by:

- Fifty dollars, for a first offense.
- Two hundred and fifty dollars, for a second offense occurring within 12 months after a prior conviction.
- Five hundred dollars, for a third offense occurring within 36 months after a prior conviction.
- One thousand dollars, for a fourth or subsequent offense occurring within 72 months after a prior conviction.⁵⁸

Spring Protection Zones

Section 327.45, F.S., authorizes the FWC to establish protection zones that restrict the speed and operation of vessels to protect and prevent harm to springs.⁵⁹ Such harm includes negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species.⁶⁰ The penalty for operating a vessel in violation of a spring

⁵³ Section 327.46(1)(b), F.S.

⁵⁴ Fla. Admin. Code R. 68D-24.002, defines the term “Slow Speed Minimum Wake” to mean that a vessel must be fully off plane and completely settled in the water and it may not proceed greater than that speed which is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under existing circumstances.

⁵⁵ Section 327.46(1)(b), F.S.

⁵⁶ *Id.*

⁵⁷ Section 327.73, F.S.

⁵⁸ *Id.*

⁵⁹ Section 327.45, F.S.

⁶⁰ *Id.*

protection zone is a noncriminal infraction charged as a uniform boating citation of which the civil penalty is:

- Fifty dollars, for a first offense.
- Two hundred and fifty dollars, for a second offense occurring within 12 months after a prior conviction.
- Five hundred dollars, for a third offense occurring within 36 months after a prior conviction.
- One thousand dollars, for a fourth or subsequent offense occurring within 72 months after a prior conviction.⁶¹

The FWC is responsible for the posting and maintenance of regulatory markers to identify protection zones.⁶²

Uniform Waterway Markers

The FWC has established a uniform system of regulatory markers compatible with the system of regulatory markers prescribed by the United States Coast Guard in the United States Aids to Navigation System.⁶³ The Division of Law Enforcement's Boating Waterways Section, within the FWC, permits and regulates the placement of markers in, on, and over the waters and shores of Florida.⁶⁴

A person or municipality, county, or other governmental entity may not place any uniform waterway marker in, on, or over the waters or shores of the state without a permit.⁶⁵ The FWC will not issue any permit authorizing placement of regulatory markers implementing municipal or county ordinances that:

- Are in violation of s. 327.60, F.S., relating to limitations on local regulations;
- Establish boating-restricted areas until such ordinances have been reviewed and approved by the Boating and Waterways Section; or
- Regulate vessel speed or operation for manatee protection purposes, until such ordinances have been reviewed and approved by the FWC, coordinated through the Imperiled Species Management Section, and provided that such ordinances do not apply within the marked navigation channel of the Florida Intracoastal Waterway or to the waters within 100 feet of said channel.⁶⁶

III. Effect of Proposed Changes:

The bill implements many of the Florida Fish and Wildlife Conservation Commission's (FWC) recommendations for the anchoring and mooring of vessels on state waters as provided in its report on the pilot program relating to the anchoring or mooring of vessels outside public mooring fields.

⁶¹ Section 327.73, F.S.

⁶² Section 327.45, F.S.

⁶³ Section 327.41, F.S.; *see* 33 C.F.R. §§ 62.1-62.65.

⁶⁴ Fla. Admin. Code R. 68D-23.102.

⁶⁵ Section 327.40, F.S.

⁶⁶ Fla. Admin. Code R. 68D-23.101.

At-risk and Derelict Vessels

Section 2 amends s. 327.02, F.S., to define the term “barge” to mean “a vessel that does not have living quarters, is not propelled by its own power, and is designed to be pushed or pulled by another vessel;” and to define the term “effective means of propulsion for safe navigation” to mean “when a vessel, other than a barge, is equipped with a functioning motor, controls, and steering system; or rigging and sails that are present and in good working order, and a functioning steering system.”

Section 4 amends s. 327.4107, F.S., to provide an additional condition for which an officer may deem a vessel at risk of becoming derelict. Under this section, a vessel is at risk of becoming derelict if within 72 hours after the owner or operator of the vessel receives telephonic or written notification by an officer that the vessel does not have an effective means of propulsion for safe navigation, the vessel still does not have an effective means of propulsion for safe navigation and the owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair. This section authorizes the written notice to be provided by electronic mail or by other electronic documentation. The FWC is authorized to adopt rules to implement the new condition for at-risk vessels.

Sections 11 and 14 amend ss. 327.73 and 328.72, F.S., respectively, to provide the following penalties for an expired vessel registration:

- The owner or operator of a vessel with an expired registration of six months or less, upon a first or subsequent offense, commits a noncriminal infraction, punishable by a civil penalty of up to \$50;
- The owner or operator of a vessel with an expired registration of more than six months, upon a first offense, commits a noncriminal infraction punishable by a civil penalty of up to \$250; and
- The owner or operator of a vessel with an expired registration of more than six months, upon a second or subsequent offense, commits a noncriminal infraction, punishable by a civil penalty of up to \$500. Additionally, such a violator may not just pay the civil penalty by mail or in person within 30 days of receipt of the citation, but must appear before the designated official at the time and location of a scheduled hearing.

Section 12 amends s. 328.09, F.S., to prohibit the Department of Highway Safety and Motor Vehicles (DHSMV) from issuing a certificate of title to any applicant for any vessel that has been deemed derelict by a law enforcement officer. A law enforcement officer must inform the DHSMV in writing, which may include facsimile, electronic mail, or other electronic documentation, of the vessel’s derelict status and must supply the vessel title number or vessel identification number. The DHSMV is authorized to issue a certificate of title once a law enforcement officer has verified in writing that the vessel is no longer a derelict vessel.

Section 15 amends s. 705.103, F.S., to exempt officers who post a notice on a derelict vessel which he or she ascertains as lost or abandoned property from the additional requirement that such notice be sent by certified mail to the owner of the property when the law enforcement officer has given such owner notice of a violation of derelict vessels and issued a violation of such to the owner.

Anchoring or Mooring Limitation Areas

Section 6 creates s. 327.4109, F.S., to prohibit the anchoring or mooring of a vessel or floating structure within:

- 150 feet of any marina, boat ramp, or other vessel launching or loading facility;
- 300 feet of a superyacht repair facility; or
- 100 feet of public mooring field boundaries or a lesser distance if approved by the FWC upon request by a local government within which the mooring field is located.

Section 6 defines the term “superyacht repair facility” to mean a facility that can provide service or repair to a yacht with a load line of 120 feet or more in length.

Exceptions to the anchoring and mooring prohibitions for vessel launching or loading facilities or public mooring field boundaries are allowed if:

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the people on board unless the vessel anchors or moors. In such an event, the vessel may anchor or moor for five business days or until the vessel is repaired, whichever occurs first; or
- Imminent or existing weather in the vicinity of the vessel poses an unreasonable risk of harm to the vessel or the persons on board unless the vessel anchors or moors. The vessel may anchor or moor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.

Additionally, this section exempts all of the following vessels from the anchoring or mooring prohibition:

- Vessels owned or operated by a governmental entity;
- Construction or dredging vessels on an active job site;
- Vessels actively engaged in commercial fishing; and
- Vessels engaged in recreational fishing when the persons onboard are actively tending hook and line fishing gear or nets.

This section prohibits a vessel or floating structure from anchoring, mooring, tying, or otherwise affixing or allowing the vessel or floating structure to remain anchored, moored, tied, or otherwise affixed to an unpermitted, unauthorized, or otherwise unlawful object that is on or affixed to the bottom of waters of the state. This prohibition does not apply to a private mooring owned by the owner of private submerged lands. This section also prohibits a vessel or floating structure to be moored within the marked boundary of a public mooring field unless the owner or operator has a contractual agreement or other business arrangement to do so.

A violation of an anchoring or mooring prohibition under the bill is a noncriminal infraction for a first violation, punishable by a civil penalty of up to \$50; second violation, punishable by a civil penalty of up to \$100; or a third or subsequent violation, punishable by a civil penalty of up to \$250. Additionally, the bill authorizes any such noncriminal violation to be enforced by a uniform boating citation issued to the owner or operator of a vessel or floating structure unlawfully anchored, moored, tied, or otherwise affixed in a prohibited area. Section 10 amends

s. 327.70, F.S., to reflect this change to the noncriminal violations enforced by uniform boating citations.

Section 5 amends s. 327.4108, F.S., to keep the designated anchoring limitation areas in place after the Legislature adopts the FWC's recommendations for the regulation of mooring vessels outside of public mooring fields.

Section 7 amends s. 327.44, F.S., to include mooring as a prohibited practice if it unreasonably or unnecessarily constitutes a navigational hazard or impediment to navigation under bridges.

Local Regulation of the Anchoring or Mooring of Vessels

Section 2 amends s. 327.02, F.S., to revise the definition of "live-aboard vessel" to remove vessels represented as a place of business or a professional or other commercial enterprise and include vessels used as residences which does not have an effective means of propulsion for safe navigation. Additionally, the definition is revised to expressly exclude commercial vessels and barges, rather than just commercial fishing boats. Further, "commercial vessel" is defined to mean a vessel represented as a place of business.

Section 13 amends s. 328.70, F.S., to include a "commercial fishing vessel" as a vessel that must be classified and registered as a "commercial vessel."

Section 9 amends s. 327.60, F.S., to authorize local governments to enact and enforce regulations requiring owners or operators of vessels or floating structures subject to marine sanitation requirements to provide proof of proper disposal of sewage by means of an approved pumpout service, pumpout facility, or waste reception facility if the vessel is anchored or moored for more than 10 consecutive days within the following areas:

- Marked boundaries of a permitted mooring field under the jurisdiction of the local government; or
- Designated no discharge zones pursuant to 40 C.F.R. s. 1700.10, including those provided under 53 F.R. 1678 (1988) for Destin Harbor; 64 F.R. 46390 (1999) for the City of Key West; and 67 F.R. 35735 (2002) for the Florida Keys National Marine Sanctuary.⁶⁷

Before a local government may adopt an ordinance to enact and enforce such regulations, the local government is required to provide adequate sewage pumpout services. The bill prohibits any ordinance that is adopted from taking effect until the FWC has reviewed the ordinance and determined that the ordinance is consistent with the requirements. The bill clarifies that local governments may enact or enforce sewage pumpout requirements for live-aboard vessels within any areas of its jurisdiction. The FWC is authorized to adopt rules to implement the provisions relating to local governmental authority to adopt ordinances for marine sanitation requirements authorized pursuant to the bill.

⁶⁷ United States Environmental Protection Agency, *No-Discharge Zones by State*, <https://www.epa.gov/vessels-marinas-and-ports/no-discharge-zones-ndzs-state#fl> (last visited Mar. 17, 2017).

Additionally, Section 9 authorizes a local government to enact and enforce regulations that allow the local government to remove a vessel affixed to a public dock within its jurisdiction that has been deemed abandoned or lost property.

Private Residential Multifamily Docks

Section 1 amends s. 253.0347, F.S., to allow private residential multifamily docks grandfathered-in to use sovereignty submerged lands by January 1, 1998, pursuant to former Florida Administrative Code Rule 18-21.00405, as it existed in rule on March 15, 1990, to exceed the 1:1 ratio for the number of moored boats to the number of units within the private multifamily development, as previously authorized under the grandfather program.

Boating Restricted Areas

Section 8 amends s. 327.46, F.S., to authorize the FWC to establish boating restricted areas by rule upon request of owners of private submerged lands that are adjacent to Outstanding Florida Waters⁶⁸ or an aquatic preserve for the sole purpose of protecting any seagrass and contiguous seagrass habitat within their private property boundaries from seagrass scarring due to propeller dredging. Owners making such request must demonstrate to the FWC clear ownership of the submerged lands.

The term “seagrass” is defined to mean “Cuban shoal grass (*Halodule wrightii*), turtle grass (*Thalassia testudinum*), manatee grass (*Syringodium filiforme*), star grass (*Halophila engelmannii*), paddle grass (*Halophila decipiens*), Johnson’s seagrass (*Halophila johnsonii*), or widgeon grass (*Ruppia maritima*).”⁶⁹

The bill requires the commission to develop rules to implement the establishment of boating restricted areas, including, but not limited to, establishing an application process and criteria for meeting the request requirements. Private property owners are required to apply to the FWC for a uniform waterway marker permit for marking any boating-restricted area established by rule.

Section 3 amends s. 327.391, F.S., to conform a cross-reference for s. 327.02, F.S., relating to definitions.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁶⁸ Section 403.061(27), F.S., requires the Department of Environmental Protection to establish “Outstanding Florida Waters” which are water bodies worthy of special protection because of their natural attributes.

⁶⁹ See s. 253.04, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on both state and local governments. While the FWC and local governments may experience positive fiscal impacts resulting from the issuance of boating citations, they may also experience increased costs due to increased enforcement efforts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 253.0347, 327.02, 327.391, 327.4107, 327.4108, 327.46, 327.60, 327.70, 327.73, 328.09, 328.72, and 705.103.

This bill creates section 327.4109 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS/CS by Appropriations on April 20, 2017:

The committee substitute does the following:

- Defines the term “barge” to mean “a vessel that does not have living quarters, is not propelled by its own power, and is designed to be pushed or pulled by another vessel;”

- Prohibits a vessel or floating structure to be moored within the marked boundary of a public mooring field unless the owner or operator has a contractual agreement or other business arrangement to do so;
- Includes mooring as a prohibited practice if it unreasonably or unnecessarily constitutes a navigational hazard or impediment to navigation under bridges;
- Includes a “commercial fishing vessel” as a vessel that must be classified and registered as a “commercial vessel.”

CS by Environmental Preservation and Conservation on March 22, 2017:

The CS/SB 1338 does the following:

- Amends s. 253.0347, F.S., to authorize grandfathered-in private residential multifamily docks to exceed the amount of moored boats to the number of units within the private multifamily development.
- Defines the term “barge” to mean a flat-bottomed vessel used for the transport of goods on inland waterways that is propelled by its own power or towed by another vessel.
 - Exempts barges from the definition of the term “effective means of propulsion for safe navigation” and from the definition of the term “live-aboard vessel.”
- Revises the definition of the term “live-aboard vessel” to remove vessels represented as a place of business or a professional or other commercial enterprise.
 - Adds such vessels as vessels that local governments are authorized to regulate outside public mooring fields.
 - Expressly exempts commercial vessels rather than commercial fishing boats from the definition of live-aboard vessel.
- Revises the condition under which a vessel may be deemed at-risk if it does not have an effective means of propulsion for safe navigation by:
 - Clarifying that the notice must be written but may be provided electronically;
 - Provides the vessel owner or operator the opportunity to provide documentation of having ordered necessary parts for vessel repair; and
 - Authorizes the FWC to adopt rules to implement.
- Revises the amendment to s. 327.4108, F.S., instead of striking through the entire subsection the amendment adds that this section shall remain in affect notwithstanding the Legislature’s adoption of FWC’s recommendations.
- Revises s. 327.4109, F.S., relating to anchoring or mooring prohibited by:
 - Adding an additional prohibition on the anchoring or mooring of a vessel within 300 feet of a superyacht repair facility and defines the term “superyacht repair facility.”
 - Revising the 300 feet prohibition relating to public mooring fields to 100 feet. Authorizes the FWC to adopt rules to implement.
 - Revising the circumstances under which a vessel may anchor within 100 feet of a public mooring field and within 150 feet of a vessel launching or loading facility to authorize anchoring or mooring for 5 business days for repairs instead of 3.
 - Removes the criminal penalty for second and subsequent violations.
- Amends s. 327.46, F.S., to authorize the FWC to establish boating restricted areas to protect seagrasses on privately owned submerged lands, upon request by owners of such lands that are adjacent to Outstanding Florida Waters or an aquatic preserve.

- Revises the amendment to s. 327.60, F.S., to limit the proof of pumpout requirements to vessels when anchored or moored for more than 10 consecutive days within the specified areas.
- Authorizes local governments to enact and enforce regulations that allow the local government to remove a vessel affixed to a public dock within its jurisdiction that is abandoned or lost property.
- Removes the criminal penalty for violating registration renewal requirements a second or subsequent time.
- Amends s. 328.09, F.S., to prohibit the Department of Highway Safety and Motor Vehicles from issuing a certificate of title to any applicant for any vessel that has been deemed derelict until the officer informs the department in writing that the vessel is no longer derelict.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Book) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (f) of subsection (2) of section
253.0347, Florida Statutes, is amended to read:

253.0347 Lease of sovereignty submerged lands for private
residential docks and piers.—

(2)

(f) A lessee of sovereignty submerged lands for a private



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11 residential multifamily dock designed to moor boats up to the
12 number of units within the multifamily development is not
13 required to pay lease fees for a preempted area equal to or less
14 than 10 times the riparian shoreline along sovereignty submerged
15 land on the affected waterbody times the number of units with
16 docks in the private multifamily development. Private
17 residential multifamily docks grandfathered-in to use
18 sovereignty submerged lands by January 1, 1998, pursuant to
19 former rule 18-21.00405, Florida Administrative Code, as it
20 existed in rule on March 15, 1990, may moor a number of boats
21 that exceed the number of units within the private multifamily
22 development as previously authorized under such rule.

23 Section 2. Present subsections (3), (4), and (5) of section
24 327.02, Florida Statutes, are renumbered as subsections (4),
25 (5), and (6), respectively, present subsections (6), (7), (8),
26 (9), and (10) are renumbered as subsections (7), (9), (10),
27 (11), and (12), respectively, present subsections (11) through
28 (15) are renumbered as subsections (14) through (18),
29 respectively, present subsections (16) through (44) are
30 renumbered as subsections (19) through (47), respectively,
31 present subsections (6) and (19) are amended, and new
32 subsections (3), (8), and (13) are added to that section, to
33 read:

34 327.02 Definitions.—As used in this chapter and in chapter
35 328, unless the context clearly requires a different meaning,
36 the term:

37 (3) "Barge" means a vessel that does not have living
38 quarters, is not propelled by its own power, and is designed to
39 be pushed or pulled by another vessel.



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40 (7)~~(6)~~ "Commercial fishing vessel" means:

41 ~~(a)~~ a vessel primarily engaged in the taking or landing of

42 saltwater fish or saltwater products or freshwater fish or

43 freshwater products, or a vessel licensed pursuant to s. 379.361

44 from which commercial quantities of saltwater products are

45 harvested, from within and without the waters of this state for

46 sale to the consumer or to a retail or wholesale dealer.

47 ~~(b) Any other vessel, except a recreational vessel as~~

48 ~~defined in this section.~~

49 (8) "Commercial vessel" means a vessel represented as a

50 place of business or a professional or other commercial

51 enterprise.

52 (13) "Effective means of propulsion for safe navigation"

53 means a vessel, other than a barge, that is equipped with:

54 (a) A functioning motor, controls, and steering system; or

55 (b) Rigging and sails that are present and in good working

56 order, and a functioning steering system.

57 (22)~~(19)~~ "Live-aboard vessel" means:

58 (a) A vessel used solely as a residence and not for

59 navigation;

60 ~~(b) A vessel represented as a place of business or a~~

61 ~~professional or other commercial enterprise; or~~

62 (b)~~(c)~~ A vessel for which a declaration of domicile has

63 been filed pursuant to s. 222.17; or

64 (c) A vessel used as a residence that does not have an

65 effective means of propulsion for safe navigation.

66

67 A commercial fishing vessel ~~boat~~ is expressly excluded from the

68 term "live-aboard vessel."



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69 Section 3. Subsection (1) of section 327.391, Florida
70 Statutes, is amended to read:

71 327.391 Airboats regulated.—

72 (1) The exhaust of every internal combustion engine used on
73 any airboat operated on the waters of this state shall be
74 provided with an automotive-style factory muffler, underwater
75 exhaust, or other manufactured device capable of adequately
76 muffling the sound of the exhaust of the engine as described in
77 s. 327.02(30) ~~s. 327.02(27)~~. The use of cutouts or flex pipe as
78 the sole source of muffling is prohibited, except as provided in
79 subsection (4). Any person who violates this subsection commits
80 a noncriminal infraction punishable as provided in s. 327.73(1).

81 Section 4. Paragraph (e) is added to subsection (2) of
82 section 327.4107, Florida Statutes, to read:

83 327.4107 Vessels at risk of becoming derelict on waters of
84 this state.—

85 (2) An officer of the commission or of a law enforcement
86 agency specified in s. 327.70 may determine that a vessel is at
87 risk of becoming derelict if any of the following conditions
88 exist:

89 (e) The vessel does not have an effective means of
90 propulsion for safe navigation within 72 hours after the vessel
91 owner or operator receives telephonic or written notice, which
92 may be provided by facsimile, electronic mail, or other
93 electronic means, stating such from an officer, and the vessel
94 owner or operator is unable to provide a receipt, proof of
95 purchase, or other documentation of having ordered necessary
96 parts for vessel repair. The commission may adopt rules to
97 implement this paragraph.



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98 Section 5. Subsection (7) of section 327.4108, Florida
99 Statutes, is amended to read:

100 327.4108 Anchoring of vessels in anchoring limitation
101 areas.—

102 (7) This section shall remain in effect notwithstanding
103 ~~expires upon~~ the Legislature's adoption of the commission's
104 recommendations for the regulation of mooring vessels outside of
105 public mooring fields pursuant to s. 327.4105.

106 Section 6. Section 327.4109, Florida Statutes, is created
107 to read:

108 327.4109 Anchoring or mooring prohibited; exceptions;
109 penalties.—

110 (1) (a) An owner or operator of a vessel or floating
111 structure may not anchor or moor such that the nearest approach
112 of the anchored or moored vessel or floating structure is:

113 1. Within 150 feet of any marina, boat ramp, boatyard, or
114 other vessel launching or loading facility;

115 2. Within 300 feet of a superyacht repair facility. For
116 purposes of this subparagraph, the term "superyacht repair
117 facility" means a facility that services or repairs a yacht of
118 120 feet or more in length; or

119 3. Within 100 feet outward from the marked boundary of a
120 public mooring field or a lesser distance if approved by the
121 commission upon request of a local government within which the
122 mooring field is located. The commission may adopt rules to
123 implement this subparagraph.

124 (b) This subsection does not apply to:

125 1. A vessel owned or operated by a governmental entity.

126 2. A construction or dredging vessel on an active job site.



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127 3. A commercial fishing vessel actively engaged in
128 commercial fishing.

129 4. A vessel actively engaged in recreational fishing if the
130 persons onboard are actively tending hook and line fishing gear
131 or nets.

132 (2) Notwithstanding subsection (1), an owner or operator of
133 a vessel may anchor or moor within 150 feet of any marina, boat
134 ramp, boatyard, or other vessel launching or loading facility,
135 within 300 feet of a superyacht repair facility, or within 100
136 feet outward from the marked boundary of a public mooring field
137 if:

138 (a) The vessel suffers a mechanical failure that poses an
139 unreasonable risk of harm to the vessel or the persons onboard
140 such vessel. The owner or operator of the vessel may anchor or
141 moor for 5 business days or until the vessel is repaired,
142 whichever occurs first.

143 (b) Imminent or existing weather conditions in the vicinity
144 of the vessel pose an unreasonable risk of harm to the vessel or
145 the persons onboard such vessel. The owner or operator of the
146 vessel may anchor or moor until weather conditions no longer
147 pose such risk. During a hurricane or tropical storm, weather
148 conditions are deemed to no longer pose an unreasonable risk of
149 harm when the hurricane or tropical storm warning affecting the
150 area has expired.

151 (3) The owner or operator of a vessel or floating structure
152 may not anchor or moor within the marked boundary of a public
153 mooring field unless the owner or operator has a lawful right to
154 anchor or moor in the mooring field by contractual agreement or
155 other business arrangement.



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156 (4) The owner or operator of a vessel or floating structure
157 may not anchor, moor, tie, or otherwise affix or allow the
158 vessel or floating structure to remain anchored, moored, tied,
159 or otherwise affixed to an unpermitted, unauthorized, or
160 otherwise unlawful object that is on or affixed to the bottom of
161 the waters of this state. This subsection does not apply to a
162 private mooring owned by the owner of privately owned submerged
163 lands.

164 (5) A violation of this section is a noncriminal
165 infraction, punishable as provided in s. 327.73(1)(bb).

166 Section 7. Subsection (2) of section 327.44, Florida
167 Statutes, is amended to read:

168 327.44 Interference with navigation; relocation or removal;
169 recovery of costs.—

170 (2) No person shall anchor, moor ~~operate~~, or permit to be
171 anchored or moored, except in case of emergency, or operate
172 ~~operated~~ a vessel or carry on any prohibited activity in a
173 manner which shall unreasonably or unnecessarily constitute a
174 navigational hazard or interfere with another vessel. Anchoring
175 or mooring under bridges or in or adjacent to heavily traveled
176 channels shall constitute interference if unreasonable under the
177 prevailing circumstances.

178 Section 8. Subsection (1) of section 327.46, Florida
179 Statutes, is amended, and paragraphs (d) and (e) are added to
180 that subsection, to read:

181 327.46 Boating-restricted areas.—

182 (1) Boating-restricted areas, including, but not limited
183 to, restrictions of vessel speeds and vessel traffic, may be
184 established on the waters of this state for any purpose



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185 necessary to protect the safety of the public if such
186 restrictions are necessary based on boating accidents,
187 visibility, hazardous currents or water levels, vessel traffic
188 congestion, or other navigational hazards or to protect
189 seagrasses on privately owned submerged lands.

190 (a) The commission may establish boating-restricted areas
191 by rule pursuant to chapter 120.

192 (b) Municipalities and counties have the authority to
193 establish the following boating-restricted areas by ordinance:

194 1. An ordinance establishing an idle speed, no wake
195 boating-restricted area, if the area is:

196 a. Within 500 feet of any boat ramp, hoist, marine railway,
197 or other launching or landing facility available for use by the
198 general boating public on waterways more than 300 feet in width
199 or within 300 feet of any boat ramp, hoist, marine railway, or
200 other launching or landing facility available for use by the
201 general boating public on waterways not exceeding 300 feet in
202 width.

203 b. Within 500 feet of fuel pumps or dispensers at any
204 marine fueling facility that sells motor fuel to the general
205 boating public on waterways more than 300 feet in width or
206 within 300 feet of the fuel pumps or dispensers at any licensed
207 terminal facility that sells motor fuel to the general boating
208 public on waterways not exceeding 300 feet in width.

209 c. Inside or within 300 feet of any lock structure.

210 2. An ordinance establishing a slow speed, minimum wake
211 boating-restricted area if the area is:

212 a. Within 300 feet of any bridge fender system.

213 b. Within 300 feet of any bridge span presenting a vertical



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214 clearance of less than 25 feet or a horizontal clearance of less
215 than 100 feet.

216 c. On a creek, stream, canal, or similar linear waterway if
217 the waterway is less than 75 feet in width from shoreline to
218 shoreline.

219 d. On a lake or pond of less than 10 acres in total surface
220 area.

221 3. An ordinance establishing a vessel-exclusion zone if the
222 area is:

223 a. Designated as a public bathing beach or swim area.

224 b. Within 300 feet of a dam, spillway, or flood control
225 structure.

226 (c) Municipalities and counties have the authority to
227 establish by ordinance the following other boating-restricted
228 areas:

229 1. An ordinance establishing an idle speed, no wake
230 boating-restricted area, if the area is within 300 feet of a
231 confluence of water bodies presenting a blind corner, a bend in
232 a narrow channel or fairway, or such other area if an
233 intervening obstruction to visibility may obscure other vessels
234 or other users of the waterway.

235 2. An ordinance establishing a slow speed, minimum wake, or
236 numerical speed limit boating-restricted area if the area is:

237 a. Within 300 feet of a confluence of water bodies
238 presenting a blind corner, a bend in a narrow channel or
239 fairway, or such other area if an intervening obstruction to
240 visibility may obscure other vessels or other users of the
241 waterway.

242 b. Subject to unsafe levels of vessel traffic congestion.



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243 c. Subject to hazardous water levels or currents, or
244 containing other navigational hazards.

245 d. An area that accident reports, uniform boating
246 citations, vessel traffic studies, or other creditable data
247 demonstrate to present a significant risk of collision or a
248 significant threat to boating safety.

249 3. An ordinance establishing a vessel-exclusion zone if the
250 area is reserved exclusively:

251 a. As a canoe trail or otherwise limited to vessels under
252 oars or under sail.

253 b. For a particular activity and user group separation must
254 be imposed to protect the safety of those participating in such
255 activity.

256

257 Any of the ordinances adopted pursuant to this paragraph shall
258 not take effect until the commission has reviewed the ordinance
259 and determined by substantial competent evidence that the
260 ordinance is necessary to protect public safety pursuant to this
261 paragraph. Any application for approval of an ordinance shall be
262 reviewed and acted upon within 90 days after receipt of a
263 completed application. Within 30 days after a municipality or
264 county submits an application for approval to the commission,
265 the commission shall advise the municipality or county as to
266 what information, if any, is needed to deem the application
267 complete. An application shall be considered complete upon
268 receipt of all requested information and correction of any error
269 or omission for which the applicant was timely notified or when
270 the time for such notification has expired. The commission's
271 action on the application shall be subject to review under



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272 chapter 120. The commission shall initiate rulemaking no later
273 than January 1, 2010, to provide criteria and procedures for
274 reviewing applications and procedures for providing for public
275 notice and participation pursuant to this paragraph.

276 (d) Owners of private submerged lands that are adjacent to
277 Outstanding Florida Waters, as defined in s. 403.061(27), or an
278 aquatic preserve established under ss. 258.39-258.399 may
279 request that the commission establish boating-restricted areas
280 solely to protect any seagrass and contiguous seagrass habitat
281 within their private property boundaries from seagrass scarring
282 due to propeller dredging. Owners making a request pursuant to
283 this paragraph must demonstrate to the commission clear
284 ownership of the submerged lands. The commission shall adopt
285 rules to implement this paragraph, including, but not limited
286 to, establishing an application process and criteria for meeting
287 the requirements of this paragraph. Each approved boating-
288 restricted area shall be established by commission rule. For
289 marking boating-restricted zones established pursuant to this
290 paragraph, owners of private submerged lands shall apply to the
291 commission for a uniform waterway marker permit in accordance
292 with ss. 327.40 and 327.41, and shall be responsible for marking
293 the boating-restricted zone in accordance with the terms of the
294 permit.

295 (e) As used in this section, the term "seagrass" has the
296 same meaning as in s. 253.04.

297 Section 9. Subsections (2) and (3) of section 327.60,
298 Florida Statutes, are amended, and subsections (4) and (5) are
299 added to that section, to read:

300 327.60 Local regulations; limitations.-



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301 (2) ~~Nothing in~~ This chapter and ~~or~~ chapter 328 do not shall
302 ~~be construed to~~ prevent the adoption of any ordinance or local
303 regulation relating to operation of vessels, except that a
304 county or municipality may shall not enact, continue in effect,
305 or enforce any ordinance or local regulation:

306 (a) Establishing a vessel or associated equipment
307 performance or other safety standard, imposing a requirement for
308 associated equipment, or regulating the carrying or use of
309 marine safety articles;

310 (b) Relating to the design, manufacture, or installation,
311 ~~or use~~ of any marine sanitation device on any vessel, except as
312 authorized in subsection (4);

313 (c) Regulating any vessel upon the Florida Intracoastal
314 Waterway;

315 (d) Discriminating against personal watercraft;

316 (e) Discriminating against airboats, for ordinances adopted
317 after July 1, 2006, unless adopted by a two-thirds vote of the
318 governing body enacting such ordinance;

319 (f) Regulating the anchoring of vessels ~~other than live-~~
320 ~~aboard vessels~~ outside the marked boundaries of mooring fields
321 permitted as provided in s. 327.40, except for:

322 1. Live-aboard vessels; and

323 2. Commercial vessels, excluding commercial fishing
324 vessels;

325 (g) Regulating engine or exhaust noise, except as provided
326 in s. 327.65; or

327 (h) That conflicts with any provisions of this chapter or
328 any amendments thereto or rules adopted thereunder.

329 (3) ~~Nothing in~~ This section does not shall be construed to



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330 prohibit local governments ~~governmental authorities~~ from
331 enacting or enforcing the enactment or enforcement of
332 regulations that ~~which~~ prohibit or restrict the mooring or
333 anchoring of floating structures, ~~or~~ live-aboard vessels, or
334 commercial vessels, excluding commercial fishing vessels, within
335 their jurisdictions or of any vessels within the marked
336 boundaries of mooring fields permitted as provided in s. 327.40.
337 ~~However, local governmental authorities are prohibited from~~
338 ~~regulating the anchoring outside of such mooring fields of~~
339 ~~vessels other than live-aboard vessels as defined in s. 327.02.~~

340 (4) (a) A local government may enact and enforce regulations
341 that require owners or operators of vessels or floating
342 structures subject to the marine sanitation requirements of s.
343 327.53 to provide proof of proper sewage disposal by means of an
344 approved sewage pumpout service, approved sewage pumpout
345 facility, or approved waste reception facility when anchored or
346 moored for more than 10 consecutive days within the following
347 areas:

348 1. Marked boundaries of a permitted mooring field under the
349 jurisdiction of the local government;

350 2. No-discharge zones as published in Volume 53, No. 13 of
351 the Federal Register, page 1678 (1988); Volume 64, No. 164 of
352 the Federal Register, pages 46390-46391 (1999); and Volume 67,
353 No. 98 of the Federal Register, pages 35735-35743 (2002); or

354 3. No-discharge zones established pursuant to 40 C.F.R. s.
355 1700.10.

356 (b) Before a local government may adopt an ordinance to
357 enact and enforce such regulations, the local government must
358 ensure that there are approved sewage pumpout services, approved



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359 sewage pumpout facilities, or approved waste reception
360 facilities available within its jurisdiction. Any ordinance
361 adopted pursuant to this subsection may not take effect until
362 reviewed and approved as consistent with this subsection by the
363 commission.

364 (c) This subsection does not prohibit a local government
365 from enacting or enforcing such sewage pumpout requirements for
366 live-aboard vessels, floating structures, and commercial vessels
367 within any areas of its jurisdiction.

368 (d) The commission may adopt rules to implement this
369 subsection.

370 (5) A local government may enact and enforce regulations to
371 implement the procedures for abandoned or lost property that
372 allow a local government law enforcement agency to remove a
373 vessel affixed to a public dock within its jurisdiction that is
374 abandoned or lost property pursuant to s. 705.103(1). Any
375 regulation enacted by a local government must require a written,
376 posted notice of no less than 24 hours before removal.

377 Section 10. Subsection (3) of section 327.70, Florida
378 Statutes, is amended, and paragraph (d) is added to that
379 subsection, to read:

380 327.70 Enforcement of this chapter and chapter 328.—

381 (3) (a) Noncriminal violations of the following statutes may
382 be enforced by a uniform boating citation mailed to the
383 registered owner of an unattended vessel anchored, aground, or
384 moored on the waters of this state:

385 1. Section 327.33(3) (b), relating to navigation rules.

386 2. Section 327.44, relating to interference with
387 navigation.



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388 3. Section 327.50(2), relating to required lights and
389 shapes.

390 4. Section 327.53, relating to marine sanitation.

391 5. Section 328.48(5), relating to display of decal.

392 6. Section 328.52(2), relating to display of number.

393 7. Section 327.4107, relating to vessels at risk of
394 becoming derelict.

395 8. Section 327.4109, relating to prohibited anchoring or
396 mooring.

397 (b) Citations issued to livery vessels under this
398 subsection are ~~shall be~~ the responsibility of the lessee of the
399 vessel if the livery has included a warning of this
400 responsibility as a part of the rental agreement and has
401 provided to the agency issuing the citation the name, address,
402 and date of birth of the lessee when requested by that agency.
403 The livery is not responsible for the payment of citations if
404 the livery provides the required warning and lessee information.

405 (c) A noncriminal violation of s. 327.4108 may be enforced
406 by a uniform boating citation issued to the operator of a vessel
407 unlawfully anchored in an anchoring limitation area.

408 (d) A noncriminal violation of s. 327.4109 may be enforced
409 by a uniform boating citation issued to an owner or operator of
410 a vessel or floating structure that is anchored or moored where
411 prohibited.

412 Section 11. Paragraph (g) of subsection (1) of section
413 327.73, Florida Statutes, is amended, and paragraph (bb) is
414 added to that subsection, to read:

415 327.73 Noncriminal infractions.—

416 (1) Violations of the following provisions of the vessel



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417 laws of this state are noncriminal infractions:

418 (g) Section 328.72(13), relating to operation with an
419 expired registration, for which the penalty is:

420 1. For a first or subsequent offense of s. 328.72(13)(a),
421 up to a maximum of \$50.

422 2. For a first offense of s. 328.72(13)(b), up to a maximum
423 of \$250.

424 3. For a second or subsequent offense of s. 328.72(13)(b),
425 up to a maximum of \$500. A person cited for a noncriminal
426 infraction under this subparagraph may not have the provisions
427 of paragraph (4)(a) available to him or her and must appear
428 before the designated official at the time and location of the
429 scheduled hearing.

430 (bb) Section 327.4109, relating to anchoring or mooring in
431 a prohibited area, for which the penalty is:

432 1. For a first offense, up to a maximum of \$50.

433 2. For a second offense, up to a maximum of \$100.

434 3. For a third or subsequent offense, up to a maximum of
435 \$250.

436

437 Any person cited for a violation of any provision of this
438 subsection shall be deemed to be charged with a noncriminal
439 infraction, shall be cited for such an infraction, and shall be
440 cited to appear before the county court. The civil penalty for
441 any such infraction is \$50, except as otherwise provided in this
442 section. Any person who fails to appear or otherwise properly
443 respond to a uniform boating citation shall, in addition to the
444 charge relating to the violation of the boating laws of this
445 state, be charged with the offense of failing to respond to such



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446 citation and, upon conviction, be guilty of a misdemeanor of the
447 second degree, punishable as provided in s. 775.082 or s.
448 775.083. A written warning to this effect shall be provided at
449 the time such uniform boating citation is issued.

450 Section 12. Subsection (4) is added to section 328.09,
451 Florida Statutes, to read:

452 328.09 Refusal to issue and authority to cancel a
453 certificate of title or registration.—

454 (4) The department may not issue a certificate of title to
455 any applicant for any vessel that has been deemed derelict by a
456 law enforcement officer under s. 823.11. A law enforcement
457 officer must inform the department in writing, which may be
458 provided by facsimile, electronic mail, or other electronic
459 means, of the vessel's derelict status and supply the department
460 with the vessel title number or vessel identification number.
461 The department may issue a certificate of title once a law
462 enforcement officer has verified in writing, which may be
463 provided by facsimile, electronic mail, or other electronic
464 means, that the vessel is no longer a derelict vessel.

465 Section 13. Subsection (2) of section 328.70, Florida
466 Statutes, is amended to read:

467 328.70 Legislative intent with respect to uniform
468 registration fee, classification of vessels.—

469 (2) Any vessel that ~~which~~ is required to be registered and
470 meets the definition of a commercial fishing vessel or
471 commercial vessel shall be classified and registered as a
472 "commercial vessel."

473 Section 14. Subsection (13) of section 328.72, Florida
474 Statutes, is amended to read:



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475 328.72 Classification; registration; fees and charges;
476 surcharge; disposition of fees; fines; marine turtle stickers.-

477 (13) EXPIRED REGISTRATION.-The operation, use, or storage
478 on the waters of this state of a previously registered vessel is
479 subject to the following penalties:

480 (a) The owner or operator of a vessel with an expired
481 registration of 6 months or less commits a noncriminal
482 infraction, punishable as provided in s. 327.73(1)(g)1.

483 (b) The owner or operator of a vessel with an expired
484 registration of more than 6 months commits a noncriminal
485 infraction, punishable as provided in s. 327.73(1)(g)2. or
486 (1)(g)3. after the expiration of the registration period is a
487 noncriminal violation, as defined in s. 327.73. This subsection
488 does not apply to vessels lawfully stored at a dock or in a
489 marina.

490 Section 15. Subsection (2) of section 705.103, Florida
491 Statutes, is amended to read:

492 705.103 Procedure for abandoned or lost property.-

493 (2) Whenever a law enforcement officer ascertains that an
494 article of lost or abandoned property is present on public
495 property and is of such nature that it cannot be easily removed,
496 the officer shall cause a notice to be placed upon such article
497 in substantially the following form:

498
499 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
500 PROPERTY. This property, to wit: ...(setting forth brief
501 description)... is unlawfully upon public property known as
502 ...(setting forth brief description of location)... and must be
503 removed within 5 days; otherwise, it will be removed and



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504 disposed of pursuant to chapter 705, Florida Statutes. The owner
505 will be liable for the costs of removal, storage, and
506 publication of notice. Dated this: ...(setting forth the date of
507 posting of notice)..., signed: ...(setting forth name, title,
508 address, and telephone number of law enforcement officer)....

509

510 Such notice shall be not less than 8 inches by 10 inches and
511 shall be sufficiently weatherproof to withstand normal exposure
512 to the elements. In addition to posting, the law enforcement
513 officer shall make a reasonable effort to ascertain the name and
514 address of the owner. If such is reasonably available to the
515 officer, she or he shall mail a copy of such notice to the owner
516 on or before the date of posting. If the property is a motor
517 vehicle as defined in s. 320.01(1) or a vessel as defined in s.
518 327.02, the law enforcement agency shall contact the Department
519 of Highway Safety and Motor Vehicles in order to determine the
520 name and address of the owner and any person who has filed a
521 lien on the vehicle or vessel as provided in s. 319.27(2) or (3)
522 or s. 328.15(1). On receipt of this information, the law
523 enforcement agency shall mail a copy of the notice by certified
524 mail, return receipt requested, to the owner and to the
525 lienholder, if any, except that a law enforcement officer who
526 has issued the owner of a derelict vessel a citation for a
527 violation of s. 823.11 is not required to mail a copy of the
528 notice by certified mail, return receipt requested, to the
529 owner. If, at the end of 5 days after posting the notice and
530 mailing such notice, if required, the owner or any person
531 interested in the lost or abandoned article or articles
532 described has not removed the article or articles from public



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533 property or shown reasonable cause for failure to do so, the
534 following shall apply:

535 (a) For abandoned property, the law enforcement agency may
536 retain any or all of the property for its own use or for use by
537 the state or unit of local government, trade such property to
538 another unit of local government or state agency, donate the
539 property to a charitable organization, sell the property, or
540 notify the appropriate refuse removal service.

541 (b) For lost property, the officer shall take custody and
542 the agency shall retain custody of the property for 90 days. The
543 agency shall publish notice of the intended disposition of the
544 property, as provided in this section, during the first 45 days
545 of this time period.

546 1. If the agency elects to retain the property for use by
547 the unit of government, donate the property to a charitable
548 organization, surrender such property to the finder, sell the
549 property, or trade the property to another unit of local
550 government or state agency, notice of such election shall be
551 given by an advertisement published once a week for 2
552 consecutive weeks in a newspaper of general circulation in the
553 county where the property was found if the value of the property
554 is more than \$100. If the value of the property is \$100 or less,
555 notice shall be given by posting a description of the property
556 at the law enforcement agency where the property was turned in.
557 The notice must be posted for not less than 2 consecutive weeks
558 in a public place designated by the law enforcement agency. The
559 notice must describe the property in a manner reasonably
560 adequate to permit the rightful owner of the property to claim
561 it.



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562 2. If the agency elects to sell the property, it must do so
563 at public sale by competitive bidding. Notice of the time and
564 place of the sale shall be given by an advertisement of the sale
565 published once a week for 2 consecutive weeks in a newspaper of
566 general circulation in the county where the sale is to be held.
567 The notice shall include a statement that the sale shall be
568 subject to any and all liens. The sale must be held at the
569 nearest suitable place to that where the lost or abandoned
570 property is held or stored. The advertisement must include a
571 description of the goods and the time and place of the sale. The
572 sale may take place no earlier than 10 days after the final
573 publication. If there is no newspaper of general circulation in
574 the county where the sale is to be held, the advertisement shall
575 be posted at the door of the courthouse and at three other
576 public places in the county at least 10 days prior to sale.
577 Notice of the agency's intended disposition shall describe the
578 property in a manner reasonably adequate to permit the rightful
579 owner of the property to identify it.

580 Section 16. This act shall take effect July 1, 2017.

581
582 ===== T I T L E A M E N D M E N T =====

583 And the title is amended as follows:

584 Delete everything before the enacting clause
585 and insert:

586 A bill to be entitled
587 An act relating to vessels; amending s. 253.0347,
588 F.S.; authorizing certain grandfathered private
589 residential multifamily docks to exceed the number of
590 moored boats for the number of residential units;



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591 amending s. 327.02, F.S.; providing and revising
592 definitions; amending s. 327.391, F.S.; conforming a
593 cross-reference; amending s. 327.4107, F.S.; providing
594 a condition under which a vessel is at risk of
595 becoming derelict; specifying the means by which an
596 officer may provide notice to a vessel owner or
597 operator; authorizing the Fish and Wildlife
598 Conservation Commission to adopt rules; amending s.
599 327.4108, F.S.; removing the expiration of provisions
600 relating to the anchoring of vessels in anchoring
601 limitation areas; creating s. 327.4109, F.S.;
602 prohibiting the anchoring or mooring of vessels and
603 floating structures in certain areas; providing
604 exceptions and a penalty; amending s. 327.44, F.S.;
605 prohibiting mooring that unreasonably or unnecessarily
606 constitutes a navigational hazard or interference with
607 another vessel; amending s. 327.46, F.S.; authorizing
608 owners of certain private submerged land to request
609 that the commission establish boating-restricted areas
610 to protect certain seagrass; authorizing the
611 commission to adopt rules; providing a definition;
612 amending s. 327.60, F.S.; authorizing a local
613 government to enact and enforce certain regulations
614 that prohibit or restrict mooring or anchoring of
615 certain vessels, that require sewage disposal by
616 certain vessels and floating structures, and that
617 authorize the removal of certain vessels; requiring
618 local governments with requirements for sewage
619 disposal to provide sewage pumpout services; requiring



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620 the commission to review and approve certain
621 ordinances; providing applicability; authorizing the
622 commission to adopt rules; amending s. 327.70, F.S.;
623 providing for issuance of uniform boating citations
624 for anchoring or mooring in prohibited areas; amending
625 s. 327.73, F.S.; providing penalties for operating a
626 vessel with an expired registration and anchoring or
627 mooring in prohibited areas; amending s. 328.09, F.S.;
628 prohibiting the issuance of certificates of title for
629 derelict vessels unless certain documentation is
630 provided; amending s. 328.70, F.S.; providing that a
631 commercial fishing vessel must be classified and
632 registered as a commercial vessel; amending s. 328.72,
633 F.S.; revising the penalties for operation, use, or
634 storage of vessels with an expired registration;
635 amending s. 705.103, F.S.; exempting derelict vessels
636 from certain abandoned or lost property notice
637 requirements; providing an effective date.

By the Committee on Environmental Preservation and Conservation;
and Senator Book

592-02750-17

20171338c1

1 A bill to be entitled
2 An act relating to vessels; amending s. 253.0347,
3 F.S.; providing an exemption from sovereignty
4 submerged lease fees for grandfathered private
5 residential multifamily docks; amending s. 327.02,
6 F.S.; defining terms; revising the definition of the
7 term "live-aboard vessel"; amending s. 327.391, F.S.;
8 conforming a cross-reference; amending s. 327.4107,
9 F.S.; providing that vessels without an effective
10 means of propulsion are at risk of becoming derelict
11 under certain conditions; authorizing the Fish and
12 Wildlife Conservation Commission to adopt rules;
13 amending s. 327.4108, F.S.; removing the expiration of
14 provisions relating to anchoring of vessels in
15 anchoring limitation areas; creating s. 327.4109,
16 F.S.; prohibiting anchoring or mooring of vessels and
17 floating structures in certain areas; providing
18 exceptions and penalties; authorizing the commission
19 to adopt rules; amending s. 327.46, F.S.; providing
20 for boating-restricted areas to protect seagrasses on
21 privately owned submerged lands upon application by
22 the owner and commission approval; authorizing the
23 commission to adopt rules; defining the term
24 "seagrass"; amending s. 327.60, F.S.; authorizing a
25 local government to enact and enforce certain
26 regulations for sewage disposal by certain vessels and
27 floating structures; requiring local governments with
28 requirements for sewage disposal to provide adequate
29 sewage pumpout services; requiring the commission to

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30 review such requirements and make certain
31 determinations; authorizing the commission to adopt
32 rules; providing applicability; authorizing local
33 governments to remove certain abandoned or lost
34 vessels; amending s. 327.70, F.S.; providing for
35 issuance of uniform boating citations for anchoring or
36 mooring where prohibited; amending s. 327.73, F.S.;
37 providing penalties for anchoring or mooring where
38 prohibited; amending s. 328.09, F.S.; prohibiting the
39 issuance of certificate of title for derelict vessels;
40 amending s. 328.72, F.S.; revising the penalties for
41 operation, use, or storage of a vessel with an expired
42 registration; amending s. 705.103, F.S.; providing an
43 exception for certified mail for a derelict vessel;
44 providing an effective date.
45
46 Be It Enacted by the Legislature of the State of Florida:
47
48 Section 1. Paragraph (f) of subsection (2) of section
49 253.0347, Florida Statutes, is amended to read:
50 253.0347 Lease of sovereignty submerged lands for private
51 residential docks and piers.—
52 (2)
53 (f) A lessee of sovereignty submerged lands for a private
54 residential multifamily dock designed to moor boats up to the
55 number of units within the multifamily development is not
56 required to pay lease fees for a preempted area equal to or less
57 than 10 times the riparian shoreline along sovereignty submerged
58 land on the affected waterbody times the number of units with

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59 docks in the private multifamily development. Private
 60 residential multifamily docks grandfathered-in to use
 61 sovereignty submerged lands by January 1, 1998, pursuant to
 62 former rule 18-21.00405, Florida Administrative Code, as it
 63 existed in rule on March 15, 1990, may exceed the number of
 64 moored boats for the number of units within the private
 65 multifamily development as previously authorized under the
 66 grandfather program.

67 Section 2. Present subsections (3) through (10) and present
 68 subsections (11) through (44) of section 327.02, Florida
 69 Statutes, are renumbered as subsections (4) through (11) and
 70 subsections (13) through (46), respectively, new subsections (3)
 71 and (12) are added to that section, and present subsection (19)
 72 of that section is amended, to read:

73 327.02 Definitions.—As used in this chapter and in chapter
 74 328, unless the context clearly requires a different meaning,
 75 the term:

76 (3) “Barge” means a flat-bottomed vessel used for the
 77 transport of goods on inland waterways which is propelled by its
 78 own power or towed by another vessel.

79 (12) “Effective means of propulsion for safe navigation”
 80 means when a vessel, other than a barge, is equipped with:

81 (a) A functioning motor, controls, and steering system; or

82 (b) Rigging and sails that are present and in good working
 83 order, and a functioning steering system.

84 (21)(19) “Live-aboard vessel” means:

85 (a) A vessel used solely as a residence and not for
 86 navigation;

87 (b) ~~A vessel represented as a place of business or a~~

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88 ~~professional or other commercial enterprise, or~~
 89 ~~(e) A vessel for which a declaration of domicile has been~~
 90 ~~filed pursuant to s. 222.17; or~~
 91 (c) A vessel used as a residence which does not have an
 92 effective means of propulsion for safe navigation.
 93

94 A commercial vessel and a barge are ~~fishing boat~~ is expressly
 95 excluded from the term “live-aboard vessel.”

96 Section 3. Subsection (1) of section 327.391, Florida
 97 Statutes, is amended to read:

98 327.391 Airboats regulated.—

99 (1) The exhaust of every internal combustion engine used on
 100 any airboat operated on the waters of this state shall be
 101 provided with an automotive-style factory muffler, underwater
 102 exhaust, or other manufactured device capable of adequately
 103 muffling the sound of the exhaust of the engine as described in
 104 s. 327.02(29) s. 327.02(27). The use of cutouts or flex pipe as
 105 the sole source of muffling is prohibited, except as provided in
 106 subsection (4). Any person who violates this subsection commits
 107 a noncriminal infraction punishable as provided in s. 327.73(1).

108 Section 4. Paragraph (e) is added to subsection (2) of
 109 section 327.4107, Florida Statutes, to read:

110 327.4107 Vessels at risk of becoming derelict on waters of
 111 this state.—

112 (2) An officer of the commission or of a law enforcement
 113 agency specified in s. 327.70 may determine that a vessel is at
 114 risk of becoming derelict if any of the following conditions
 115 exist:

116 (e) The vessel does not have an effective means of

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117 propulsion for safe navigation within 72 hours after the owner
 118 or operator of the vessel receives written notice, which may
 119 include electronic mail or by other electronic documentation, of
 120 such from an officer, and the vessel owner or operator is unable
 121 to provide a receipt, proof of purchase, or other documentation
 122 of having ordered necessary parts for vessel repair. The
 123 commission may adopt rules to implement this paragraph.

124 Section 5. Subsection (7) of section 327.4108, Florida
 125 Statutes, is amended to read:

126 327.4108 Anchoring of vessels in anchoring limitation
 127 areas.-

128 (7) This section shall remain in effect notwithstanding
 129 ~~expires upon~~ the Legislature's adoption of the commission's
 130 recommendations for the regulation of mooring vessels outside of
 131 public mooring fields pursuant to s. 327.4105.

132 Section 6. Section 327.4109, Florida Statutes, is created
 133 to read:

134 327.4109 Anchoring or mooring prohibited; exceptions;
 135 penalties.-

136 (1) (a) A vessel or floating structure may not anchor or
 137 moor such that the nearest approach of the anchored vessel is:

138 1. Within 150 feet of any marina, boat ramp, boatyard, or
 139 other vessel launching or loading facility;

140 2. Within 300 feet of a superyacht repair facility. For
 141 purposes of this subparagraph, a "superyacht repair facility"
 142 means a facility that can provide service or repair to a yacht
 143 with a load line of 79 feet or more in length; or

144 3. Within 100 feet of a public mooring field boundary or a
 145 lesser distance if approved by the commission upon request by a

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146 local government within which the mooring field is located. The
 147 commission may adopt rules to implement this subparagraph.

148 (b) Paragraph (a) does not apply to:

149 1. A vessel owned or operated by a governmental entity.

150 2. A construction or dredging vessel on an active job site.

151 3. A vessel actively engaged in commercial fishing.

152 4. A vessel actively engaged in recreational fishing if the
 153 persons onboard are actively tending hook and line fishing gear
 154 or nets.

155 (2) Notwithstanding paragraph (1)(a), an owner or operator
 156 of a vessel may anchor or moor within 150 feet of any marina,
 157 boat ramp, boatyard, or other vessel launching or loading
 158 facility or within 100 feet of public mooring field boundaries
 159 if:

160 (a) The vessel suffers a mechanical failure that poses an
 161 unreasonable risk of harm to the vessel or the persons on board
 162 such vessel. The owner or operator of the vessel may anchor or
 163 moor for 5 business days or until the vessel is repaired,
 164 whichever occurs first; or

165 (b) Imminent or existing weather conditions in the vicinity
 166 of the vessel pose an unreasonable risk of harm to the vessel or
 167 the persons on board. The owner or operator of the vessel may
 168 anchor or moor until weather conditions no longer pose such
 169 risk. During a hurricane or tropical storm, weather conditions
 170 are deemed to no longer pose an unreasonable risk of harm when
 171 the hurricane or tropical storm warning affecting the area has
 172 expired.

173 (3) The owner or operator of a vessel or floating structure
 174 may not anchor, moor, tie, or otherwise affix or allow the

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175 vessel or floating structure to remain anchored, moored, tied,
 176 or otherwise affixed to an unpermitted, unauthorized, or
 177 otherwise unlawful object that is on or affixed to the bottom of
 178 the waters of this state. This subsection does not apply to a
 179 private mooring owned by the owner of private submerged lands.

180 (4) A violation of this section is a noncriminal infraction
 181 punishable as provided in s. 327.73(1)(bb).

182 Section 7. Subsection (1) of section 327.46, Florida
 183 Statutes, is amended to read:

184 327.46 Boating-restricted areas.-

185 (1) Boating-restricted areas, including, but not limited
 186 to, restrictions of vessel speeds and vessel traffic, may be
 187 established on the waters of this state for any purpose
 188 necessary to protect the safety of the public if such
 189 restrictions are necessary based on boating accidents,
 190 visibility, hazardous currents or water levels, vessel traffic
 191 congestion, or other navigational hazards or to protect
 192 seagrasses on privately owned submerged lands.

193 (a) The commission may establish boating-restricted areas
 194 by rule pursuant to chapter 120.

195 (b) Municipalities and counties have the authority to
 196 establish the following boating-restricted areas by ordinance:

197 1. An ordinance establishing an idle speed, no wake
 198 boating-restricted area, if the area is:

199 a. Within 500 feet of any boat ramp, hoist, marine railway,
 200 or other launching or landing facility available for use by the
 201 general boating public on waterways more than 300 feet in width
 202 or within 300 feet of any boat ramp, hoist, marine railway, or
 203 other launching or landing facility available for use by the

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204 general boating public on waterways not exceeding 300 feet in
 205 width.

206 b. Within 500 feet of fuel pumps or dispensers at any
 207 marine fueling facility that sells motor fuel to the general
 208 boating public on waterways more than 300 feet in width or
 209 within 300 feet of the fuel pumps or dispensers at any licensed
 210 terminal facility that sells motor fuel to the general boating
 211 public on waterways not exceeding 300 feet in width.

212 c. Inside or within 300 feet of any lock structure.

213 2. An ordinance establishing a slow speed, minimum wake
 214 boating-restricted area if the area is:

215 a. Within 300 feet of any bridge fender system.

216 b. Within 300 feet of any bridge span presenting a vertical
 217 clearance of less than 25 feet or a horizontal clearance of less
 218 than 100 feet.

219 c. On a creek, stream, canal, or similar linear waterway if
 220 the waterway is less than 75 feet in width from shoreline to
 221 shoreline.

222 d. On a lake or pond of less than 10 acres in total surface
 223 area.

224 3. An ordinance establishing a vessel-exclusion zone if the
 225 area is:

226 a. Designated as a public bathing beach or swim area.

227 b. Within 300 feet of a dam, spillway, or flood control
 228 structure.

229 (c) Municipalities and counties have the authority to
 230 establish by ordinance the following other boating-restricted
 231 areas:

232 1. An ordinance establishing an idle speed, no wake

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233 boating-restricted area, if the area is within 300 feet of a
 234 confluence of water bodies presenting a blind corner, a bend in
 235 a narrow channel or fairway, or such other area if an
 236 intervening obstruction to visibility may obscure other vessels
 237 or other users of the waterway.

238 2. An ordinance establishing a slow speed, minimum wake, or
 239 numerical speed limit boating-restricted area if the area is:

240 a. Within 300 feet of a confluence of water bodies
 241 presenting a blind corner, a bend in a narrow channel or
 242 fairway, or such other area if an intervening obstruction to
 243 visibility may obscure other vessels or other users of the
 244 waterway.

245 b. Subject to unsafe levels of vessel traffic congestion.

246 c. Subject to hazardous water levels or currents, or
 247 containing other navigational hazards.

248 d. An area that accident reports, uniform boating
 249 citations, vessel traffic studies, or other creditable data
 250 demonstrate to present a significant risk of collision or a
 251 significant threat to boating safety.

252 3. An ordinance establishing a vessel-exclusion zone if the
 253 area is reserved exclusively:

254 a. As a canoe trail or otherwise limited to vessels under
 255 oars or under sail.

256 b. For a particular activity and user group separation must
 257 be imposed to protect the safety of those participating in such
 258 activity.

260 Any of the ordinances adopted pursuant to this paragraph shall
 261 not take effect until the commission has reviewed the ordinance

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262 and determined by substantial competent evidence that the
 263 ordinance is necessary to protect public safety pursuant to this
 264 paragraph. Any application for approval of an ordinance shall be
 265 reviewed and acted upon within 90 days after receipt of a
 266 completed application. Within 30 days after a municipality or
 267 county submits an application for approval to the commission,
 268 the commission shall advise the municipality or county as to
 269 what information, if any, is needed to deem the application
 270 complete. An application shall be considered complete upon
 271 receipt of all requested information and correction of any error
 272 or omission for which the applicant was timely notified or when
 273 the time for such notification has expired. The commission's
 274 action on the application shall be subject to review under
 275 chapter 120. The commission shall initiate rulemaking no later
 276 than January 1, 2010, to provide criteria and procedures for
 277 reviewing applications and procedures for providing for public
 278 notice and participation pursuant to this paragraph.

279 (d)1. Owners of private submerged lands that are adjacent
 280 to Outstanding Florida Waters, as defined in s. 403.061(27), or
 281 an aquatic preserve established under ss. 258.39-258.399, may
 282 request that the commission establish boating-restricted areas
 283 for the sole purpose of protecting any seagrass and contiguous
 284 seagrass habitat within their private property boundaries from
 285 seagrass scarring due to propeller dredging. Owners making a
 286 request pursuant to this paragraph must demonstrate to the
 287 commission clear ownership of the submerged lands.

288 2. The commission shall adopt rules to implement this
 289 paragraph, including, but not limited to, establishing an
 290 application process and criteria for meeting the requirements of

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291 subparagraph 1.292 3. Each approved boating-restricted area must be
293 established by commission rule.294 4. For marking boating-restricted areas established
295 pursuant to this paragraph, private property owners must apply
296 to the commission for a uniform waterway marker permit in
297 accordance with ss. 327.40 and 327.41.298 (e) As used in this section, the term "seagrass" has the
299 same meaning as in s. 253.04.300 Section 8. Subsections (2) and subsection (3) of section
301 327.60, Florida Statutes, are amended, and subsections (4) and
302 (5) are added to that section, to read:

303 327.60 Local regulations; limitations.-

304 (2) Nothing in this chapter or chapter 328 shall be
305 construed to prevent the adoption of any ordinance or local
306 regulation relating to operation of vessels, except that a
307 county or municipality may shall not enact, continue in effect,
308 or enforce any ordinance or local regulation:309 (a) Establishing a vessel or associated equipment
310 performance or other safety standard, imposing a requirement for
311 associated equipment, or regulating the carrying or use of
312 marine safety articles;313 (b) Relating to the design, manufacture, or installation,
314 ~~or use~~ of any marine sanitation device on any vessel, except as
315 authorized in subsection (4);316 (c) Regulating any vessel upon the Florida Intracoastal
317 Waterway;

318 (d) Discriminating against personal watercraft;

319 (e) Discriminating against airboats, for ordinances adopted

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320 after July 1, 2006, unless adopted by a two-thirds vote of the
321 governing body enacting such ordinance;322 (f) Regulating the anchoring of vessels ~~other than live-~~
323 ~~aboard vessels~~ outside the marked boundaries of mooring fields
324 permitted as provided in s. 327.40, except for:325 1. Live-aboard vessels; and326 2. Vessels represented as a place of business or a
327 professional or other commercial enterprise. This does not
328 include commercial vessels or barges;329 (g) Regulating engine or exhaust noise, except as provided
330 in s. 327.65; or331 (h) That conflicts with any provisions of this chapter or
332 any amendments thereto or rules adopted thereunder.333 (3) Nothing in this section shall be construed to prohibit
334 local governmental authorities from the enactment or enforcement
335 of regulations that which prohibit or restrict the mooring or
336 anchoring of floating structures, ~~or~~ live-aboard vessels, or
337 vessels represented as a place of business or a professional or
338 other commercial enterprise, other than commercial vessels or
339 barges, within their jurisdictions or of any vessels within the
340 marked boundaries of mooring fields permitted as provided in s.
341 327.40. However, local governmental authorities are prohibited
342 from regulating the anchoring outside of such mooring fields of
343 commercial vessels or barges and any vessels other than live-
344 aboard vessels as defined in s. 327.02.345 (4) (a) A local government may enact and enforce regulations
346 requiring owners or operators of vessels or floating structures
347 subject to the marine sanitation requirements of s. 327.53, when
348 anchored or moored for more than 10 consecutive days within the

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349 following areas, to provide proof of proper sewage disposal by
 350 means of an approved sewage pumpout service, approved sewage
 351 pumpout facility, or approved waste reception facility:

352 1. Marked boundaries of a permitted mooring field under the
 353 jurisdiction of the local government; or

354 2. Designated no-discharge zones pursuant to 40 C.F.R. s.
 355 1700.10, and those provided in Volume 53, No. 13 of the Federal
 356 Register, page 1678 (1988); Volume 64, No. 164 of the Federal
 357 Register, pages 46390-46391 (1999); and Volume 67, No. 98 of the
 358 Federal Register, pages 35735-35743 (2002).

359 (b) Before a local government may adopt an ordinance to
 360 enact and enforce such regulations, the local government must
 361 provide adequate sewage pumpout services. Any ordinance adopted
 362 pursuant to this subsection may not take effect until the
 363 commission has reviewed and approved the ordinance as being
 364 consistent with the requirements of this subsection.

365 (c) The commission may adopt rules to implement this
 366 subsection.

367 (d) This subsection does not prohibit a local government
 368 from enacting or enforcing sewage pumpout requirements for live-
 369 aboard vessels within any areas of its jurisdiction.

370 (5) A local government may enact and enforce regulations
 371 that allow the local government to remove a vessel affixed to a
 372 public dock within its jurisdiction which is abandoned or lost
 373 property pursuant to s. 705.103(1).

374 Section 9. Subsection (3) of section 327.70, Florida
 375 Statutes, is amended to read:

376 327.70 Enforcement of this chapter and chapter 328.-

377 (3) (a) Noncriminal violations of the following statutes may

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378 be enforced by a uniform boating citation mailed to the
 379 registered owner of an unattended vessel anchored, aground, or
 380 moored on the waters of this state:

381 1. Section 327.33(3)(b), relating to navigation rules.

382 2. Section 327.44, relating to interference with
 383 navigation.

384 3. Section 327.50(2), relating to required lights and
 385 shapes.

386 4. Section 327.53, relating to marine sanitation.

387 5. Section 328.48(5), relating to display of decal.

388 6. Section 328.52(2), relating to display of number.

389 7. Section 327.4107, relating to vessels at risk of
 390 becoming derelict.

391 8. Section 327.4109, relating to prohibited anchoring or
 392 mooring.

393 (b) Citations issued to livery vessels under this
 394 subsection shall be the responsibility of the lessee of the
 395 vessel if the livery has included a warning of this
 396 responsibility as a part of the rental agreement and has
 397 provided to the agency issuing the citation the name, address,
 398 and date of birth of the lessee when requested by that agency.
 399 The livery is not responsible for the payment of citations if
 400 the livery provides the required warning and lessee information.

401 (c) A noncriminal violation of s. 327.4108 may be enforced
 402 by a uniform boating citation issued to the operator of a vessel
 403 unlawfully anchored in an anchoring limitation area.

404 (d) A noncriminal violation of s. 327.4109 may be enforced
 405 by a uniform boating citation issued to an owner or operator of
 406 a vessel or floating structure unlawfully anchored, moored,

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407 tied, or otherwise affixed in a prohibited area.
 408 Section 10. Paragraph (g) of subsection (1) of section
 409 327.73, Florida Statutes, is amended, and paragraph (bb) is
 410 added to that section, to read:
 411 327.73 Noncriminal infractions.—
 412 (1) Violations of the following provisions of the vessel
 413 laws of this state are noncriminal infractions:
 414 (g) Section 328.72(13), relating to operation with an
 415 expired registration, for which the penalty is:
 416 1. For a first or subsequent offense of 328.72(13) (a), up
 417 to a maximum of \$50.
 418 2. For a first offense of 328.72(13) (b), up to a maximum of
 419 \$250.
 420 3. For a second or subsequent offense of 328.72(13) (b), up
 421 to a maximum of \$500, and the violator may not have the
 422 provisions of paragraph (4) (a) available to him or her but must
 423 appear before the designated official at the time and location
 424 of the scheduled hearing.
 425 (bb) Section 327.4109, relating to prohibited anchoring or
 426 mooring, for which the penalty is:
 427 1. For a first offense, up to a maximum of \$50.
 428 2. For a second offense, up to a maximum of \$100.
 429 3. For a third or subsequent offense, up to a maximum of
 430 \$250.
 431
 432 Any person cited for a violation of any provision of this
 433 subsection shall be deemed to be charged with a noncriminal
 434 infraction, shall be cited for such an infraction, and shall be
 435 cited to appear before the county court. The civil penalty for

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436 any such infraction is \$50, except as otherwise provided in this
 437 section. Any person who fails to appear or otherwise properly
 438 respond to a uniform boating citation shall, in addition to the
 439 charge relating to the violation of the boating laws of this
 440 state, be charged with the offense of failing to respond to such
 441 citation and, upon conviction, be guilty of a misdemeanor of the
 442 second degree, punishable as provided in s. 775.082 or s.
 443 775.083. A written warning to this effect shall be provided at
 444 the time such uniform boating citation is issued.
 445 Section 11. Subsection (4) is added to section 328.09,
 446 Florida Statutes, to read:
 447 328.09 Refusal to issue and authority to cancel a
 448 certificate of title or registration.—
 449 (4) The department may not issue a certificate of title to
 450 any applicant for any vessel that has been deemed derelict by a
 451 law enforcement officer under s. 823.11. A law enforcement
 452 officer must inform the department in writing, which may include
 453 facsimile, electronic mail, or other electronic documentation,
 454 of the vessel's derelict status and must supply the vessel title
 455 number or vessel identification number. The department may issue
 456 a certificate of title once a law enforcement officer has
 457 verified in writing, which may include facsimile, electronic
 458 mail, or other electronic documentation, that the vessel is no
 459 longer a derelict vessel.
 460 Section 12. Subsection (13) of section 328.72, Florida
 461 Statutes, is amended to read:
 462 328.72 Classification; registration; fees and charges;
 463 surcharge; disposition of fees; fines; marine turtle stickers.—
 464 (13) EXPIRED REGISTRATION.—The operation, use, or storage

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465 on the waters of this state of a previously registered vessel is
 466 subject to the following penalties:

467 (a) The owner or operator of a vessel with an expired
 468 registration of 6 months or less commits a noncriminal
 469 infraction, punishable as provided in s. 327.73(1)(g)1.

470 (b) The owner or operator of a vessel with an expired
 471 registration of more than 6 months commits a noncriminal
 472 infraction, punishable as provided in s. 327.73(1)(g)2. and 3
 473 after the expiration of the registration period is a noncriminal
 474 violation, as defined in s. 327.73. This subsection does not
 475 apply to vessels lawfully stored at a dock or in a marina.

476 Section 13. Subsection (2) of section 705.103, Florida
 477 Statutes, is amended to read:

478 705.103 Procedure for abandoned or lost property.—

479 (2) Whenever a law enforcement officer ascertains that an
 480 article of lost or abandoned property is present on public
 481 property and is of such nature that it cannot be easily removed,
 482 the officer shall cause a notice to be placed upon such article
 483 in substantially the following form:

484

485 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
 486 PROPERTY. This property, to wit: ...(setting forth brief
 487 description)... is unlawfully upon public property known as
 488 ...(setting forth brief description of location)... and must be
 489 removed within 5 days; otherwise, it will be removed and
 490 disposed of pursuant to chapter 705, Florida Statutes. The owner
 491 will be liable for the costs of removal, storage, and
 492 publication of notice. Dated this: ...(setting forth the date of
 493 posting of notice)..., signed: ...(setting forth name, title,

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494 address, and telephone number of law enforcement officer)....

495

496 Such notice shall be not less than 8 inches by 10 inches and
 497 shall be sufficiently weatherproof to withstand normal exposure
 498 to the elements. In addition to posting, the law enforcement
 499 officer shall make a reasonable effort to ascertain the name and
 500 address of the owner. If such is reasonably available to the
 501 officer, she or he shall mail a copy of such notice to the owner
 502 on or before the date of posting. If the property is a motor
 503 vehicle as defined in s. 320.01(1) or a vessel as defined in s.
 504 327.02, the law enforcement agency shall contact the Department
 505 of Highway Safety and Motor Vehicles in order to determine the
 506 name and address of the owner and any person who has filed a
 507 lien on the vehicle or vessel as provided in s. 319.27(2) or (3)
 508 or s. 328.15(1). On receipt of this information, the law
 509 enforcement agency shall mail a copy of the notice by certified
 510 mail, return receipt requested, to the owner and to the
 511 lienholder, if any, except that when a law enforcement officer
 512 has given the owner of a derelict vessel notice of a violation
 513 of s. 823.11 and issued a citation for the violation, the
 514 officer is not required to send notice by certified mail to the
 515 owner. If, at the end of 5 days after posting the notice and
 516 mailing such notice, if required, the owner or any person
 517 interested in the lost or abandoned article or articles
 518 described has not removed the article or articles from public
 519 property or shown reasonable cause for failure to do so, the
 520 following shall apply:

521 (a) For abandoned property, the law enforcement agency may
 522 retain any or all of the property for its own use or for use by

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523 the state or unit of local government, trade such property to
 524 another unit of local government or state agency, donate the
 525 property to a charitable organization, sell the property, or
 526 notify the appropriate refuse removal service.

527 (b) For lost property, the officer shall take custody and
 528 the agency shall retain custody of the property for 90 days. The
 529 agency shall publish notice of the intended disposition of the
 530 property, as provided in this section, during the first 45 days
 531 of this time period.

532 1. If the agency elects to retain the property for use by
 533 the unit of government, donate the property to a charitable
 534 organization, surrender such property to the finder, sell the
 535 property, or trade the property to another unit of local
 536 government or state agency, notice of such election shall be
 537 given by an advertisement published once a week for 2
 538 consecutive weeks in a newspaper of general circulation in the
 539 county where the property was found if the value of the property
 540 is more than \$100. If the value of the property is \$100 or less,
 541 notice shall be given by posting a description of the property
 542 at the law enforcement agency where the property was turned in.
 543 The notice must be posted for not less than 2 consecutive weeks
 544 in a public place designated by the law enforcement agency. The
 545 notice must describe the property in a manner reasonably
 546 adequate to permit the rightful owner of the property to claim
 547 it.

548 2. If the agency elects to sell the property, it must do so
 549 at public sale by competitive bidding. Notice of the time and
 550 place of the sale shall be given by an advertisement of the sale
 551 published once a week for 2 consecutive weeks in a newspaper of

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552 general circulation in the county where the sale is to be held.
 553 The notice shall include a statement that the sale shall be
 554 subject to any and all liens. The sale must be held at the
 555 nearest suitable place to that where the lost or abandoned
 556 property is held or stored. The advertisement must include a
 557 description of the goods and the time and place of the sale. The
 558 sale may take place no earlier than 10 days after the final
 559 publication. If there is no newspaper of general circulation in
 560 the county where the sale is to be held, the advertisement shall
 561 be posted at the door of the courthouse and at three other
 562 public places in the county at least 10 days prior to sale.
 563 Notice of the agency's intended disposition shall describe the
 564 property in a manner reasonably adequate to permit the rightful
 565 owner of the property to identify it.

566 Section 14. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Environmental Preservation and
Conservation, *Chair*
Appropriations Subcommittee on the Environment
and Natural Resources, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and
Human Services
Health Policy
Rules

SENATOR LAUREN FRANCES BOOK

Democratic Leader Pro Tempore
32nd District

April 13, 2017

The Honorable Jack Latvala
Chair
Senate Appropriations

Via Email

Dear Chair Latvala:

Senate Bill CS/SB 1338 passed unanimously out of the Appropriations Subcommittee on the Environment and Natural Resources today. The next reference is Appropriations.

I would appreciate it if you would place the bill on your next agenda.

Thank you for your consideration.

Sincerely,

Lauren Book
Senator, District 32

Mr. Mike Hansen, Staff Director
Ms. Alicia Weiss, Committee Administrative Assistant

REPLY TO:

☐ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/17

Meeting Date

1338

Bill Number (if applicable)

Topic Vessels

Amendment Barcode (if applicable)

Name Kelly Mallette

Job Title _____

Address 104 W. Jefferson Street

Phone (850) 224-3427

Street

Tallahassee, FL 32301

Email kelly@rlbodypa.com

City

State

Zip

Speaking: For Against Information

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

Representing Concerned Waterfront Homeowners of City of FL. Lauderdale

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)

4-20-17
Meeting Date

1338
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Richard Pinsky

Job Title _____

Address 106 E. College Ave #1200

Phone _____

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 Rybovich Marine

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 Appropriations

BILL: SB 1390

INTRODUCER: Senators Latvala and Simpson

SUBJECT: Transportation Facility Designations

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Miller</u>	<u>TR</u>	Favorable
2.	<u>McKinnon</u>	<u>Pitts</u>	<u>ATD</u>	Recommend: Favorable
3.	<u>Mckinnon</u>	<u>Hansen</u>	<u>AP</u>	Favorable

I. Summary:

SB 1390 designates the portion of U.S. 19A/S.R. 595 between Tarpon Avenue and the Pasco County line in Pinellas County as “Officer Charles ‘Charlie K’ Kondek, Jr., Memorial Highway” and directs the Florida Department of Transportation (FDOT) to erect suitable markers.

The estimated cost to the FDOT to install the designation markers required by this bill is \$1,000. See section V, “Fiscal Impact Statement” for details.

The bill takes effect July 1, 2017.

II. Present Situation:

Section 334.071, F.S., provides that legislative designations of transportation facilities are for honorary or memorial purposes, or to distinguish a particular facility. Such designations are not to be construed as requiring any action by local governments or private parties regarding the changing of any street signs, mailing addresses, or 911 emergency telephone number system listings, unless the legislation specifically provides for such changes.¹

When the Legislature establishes road or bridge designations, the Florida Department of Transportation (FDOT) is required to place markers only at the termini specified for each highway segment or bridge designated by the law creating the designation, and to erect any other markers it deems appropriate for the transportation facility.²

The FDOT may not erect the markers for honorary road or bridge designations unless the affected city or county commission enacts a resolution supporting the designation. When the

¹ Section 334.071(1), F.S.

² Section 334.071(2), F.S.

designated road or bridge segment is located in more than one city or county, each affected local government must pass resolutions supporting the designations before installation of the markers.³

III. Effect of Proposed Changes:

The bill designates the portion of U.S. 19A/S.R. 595 between Tarpon Avenue and the Pasco County line in Pinellas County as “Officer Charles ‘Charlie K’ Kondek, Jr., Memorial Highway” and directs the Florida Department of Transportation (FDOT) to erect suitable markers for the described designation.

Officer Charles ‘Charlie K’ Kondek, Jr., served the citizens of the City of Tarpon Springs as a law enforcement officer for over 17 years. On December 21, 2014, while investigating a noise nuisance complaint, Officer Kondek was ambushed by an armed adversary, exchanged gunfire, and paid the ultimate sacrifice while in service to his community.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The estimated cost to erect the designation markers required by this bill is \$1,000, based on the assumption that two markers are required at a cost to the FDOT of no less than \$500 each. The estimate includes sign fabrication, installation, and maintenance over time but does not include any additional expenses related to maintenance of traffic, dedication event costs, or replacement necessitated by damage, vandalism, or storm events.

³ Section 334.071(3), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of Florida Law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Latvala

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A bill to be entitled

An act relating to transportation facility designations; providing an honorary designation of a certain transportation facility in a specified county; directing the Department of Transportation to erect suitable markers; providing an effective date.

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

Section 1. Officer Charles "Charlie K" Kondek, Jr., Memorial Highway designated; Department of Transportation to erect suitable markers.-

(1) That portion of U.S. 19A/S.R. 595 between Tarpon Avenue and the Pasco County line in Pinellas County is designated as "Officer Charles 'Charlie K' Kondek, Jr., Memorial Highway."

(2) The Department of Transportation is directed to erect suitable markers designating Officer Charles "Charlie K" Kondek, Jr., Memorial Highway as described in subsection (1).

Section 2. This act shall take effect July 1, 2017.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/CS/SB 1406 (787872)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Powell and others

SUBJECT: Stroke Centers

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	Fav/CS
2.	Forbes	Williams	AHS	Recommend: Fav/CS
3.	Forbes	Hansen	AP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1406 requires the Agency for Health Care Administration (ACHA) to add acute stroke ready centers to the list of primary stroke centers and comprehensive stroke centers made available to emergency medical services providers. All three levels of stroke centers are treated similarly for purposes of being added to, or removed from, the list. The bill removes language instructing the ACHA to base stroke center rules on criteria established solely by the Joint Commission; and expands rule criteria to be substantially similar to any nationally recognized accrediting organization.

The Department of Health (DOH) is directed to contract with a private entity to establish and maintain a statewide stroke registry to ensure that the stroke performance measures required to be submitted are maintained and available for use to:

- Improve or modify the stroke care system;
- Ensure compliance with standards; and
- Monitor stroke patient outcomes.

Each acute ready stoke center, primary stroke center, and comprehensive stroke center, is required to regularly report to the statewide stroke registry information specified by the department. The contract provider is required to use a nationally recognized platform to collect data from each stroke center on the performance measures and provide regular reports to DOH.

Provides immunity from liability of any kind or character for damages against any acute ready stroke center, primary stroke center, or comprehensive stroke center for having provided such information to the statewide stroke registry.

The cost to create and maintain the statewide stroke registry required by this legislation is unknown. The DOH and AHCA will incur costs associated with rulemaking, but such costs should be absorbed within current resources.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

What is a Stroke?

A stroke is a serious medical condition that occurs when the blood supply to the brain is interrupted or severely reduced, depriving brain tissue of oxygen and nutrients.¹ The brain needs a constant supply of oxygen and nutrients in order to function.² Even a brief interruption in blood supply from a stroke can cause significant problems.

During a stroke, brain cells begin to die after just a few minutes without blood or oxygen.³ Brain cell death causes loss of brain function, including impaired ability with movement, speech, thinking and memory, bowel and bladder, eating, emotional control, and other vital bodily functions. A small stroke may result in problems such as weakness in an arm or leg, whereas larger strokes may cause paralysis, loss of speech, or even death.⁴ A stroke is one of the leading causes of death in the United States.⁵

There are two main types of strokes: an ischemic stroke and a hemorrhagic stroke. The former, is the most common type, and occurs when an artery in the brain becomes blocked. The latter occurs when a brain artery leaks blood or ruptures.⁶

There are two types of ischemic strokes: thrombotic and embolic.⁷ In a thrombotic stroke, a blood clot (thrombus) forms in an artery that supplies blood to the brain.⁸ In an embolic stroke, a blood clot, or other substance such as plaque or fatty material, travels through the bloodstream to an artery in the brain.⁹ With both types of ischemic stroke, the blood clot or other substance blocks the flow of oxygenated blood to a portion of the brain.¹⁰

¹ The Mayo Clinic, *Stroke*, available at <http://www.mayoclinic.org/diseases-conditions/stroke/home/ovc-20117264>, (last visited Mar. 22, 2017).

² UCLA Health, *What is a Stroke?* available at <http://stroke.ucla.edu/what-is-a-stroke>, (last visited Mar. 23, 2017).

³ Id.

⁴ Id.

⁵ National Institutes of Health, National Heart, Lung and Blood Institute, *What Is a Stroke?* (updated Jan. 27, 2017) available at <https://www.nhlbi.nih.gov/health/health-topics/topics/stroke>, (last visited Mar. 23, 2017).

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id. The blood clot or other substance traveling through the bloodstream is called an embolus.

¹⁰ Id.

The two types of hemorrhagic stroke are intracerebral and subarachnoid.¹¹ In an intracerebral hemorrhage, a blood vessel inside the brain leaks blood or ruptures.¹² In a subarachnoid hemorrhage, a blood vessel on the surface of the brain leaks blood or ruptures, and bleeding occurs between the inner and middle layers of the membrane that covers the brain.¹³ In both types of hemorrhagic stroke, the leaked blood causes swelling of the brain and increased pressure in the skull. This swelling and pressure causes brain damage.¹⁴

Signs and Symptoms of a Stroke

The signs and symptoms of a stroke often develop quickly. However, they can develop over hours or even days as well. Signs and symptoms of a stroke may include:

- Sudden weakness;
- Paralysis (an inability to move) or numbness of the face, arms, or legs, especially on one side of the body;
- Confusion;
- Trouble speaking or understanding speech;
- Trouble seeing in one or both eyes;
- Problems breathing;
- Dizziness, trouble walking, loss of balance or coordination, and unexplained falls;
- Loss of consciousness; and
- Sudden and severe headache.¹⁵

Stroke Treatment

Time is of the essence in the treatment of a stroke. Medical personnel begin treatment in the ambulance on the way to the hospital.¹⁶ Treatment for a stroke depends on how much time has elapsed since the symptoms began to appear; and whether the stroke is ischemic or hemorrhagic.¹⁷

Treatment for an ischemic stroke may include medicines,¹⁸ such as antiplatelet medicines and blood thinners, and medical procedures, but a hemorrhagic stroke may require surgery to find and stop the bleeding.¹⁹ In addition to emergency care to treat a stroke, an individual may also receive treatment to prevent another stroke and rehabilitation to treat the side effects of the stroke.²⁰ According to the Centers for Disease Control and Prevention (CDC), research indicates

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Center for Disease Control and Prevention, *Stroke Treatment* (updated Feb. 10, 2017) available at <https://www.cdc.gov/stroke/treatments.htm>, (last visited Mar. 23, 2017).

¹⁷ National Institutes of Health, National Heart, Lung and Blood Institute, *How Is a Stroke Treated?* (updated Jan. 27, 2017) available at <https://www.nhlbi.nih.gov/health/health-topics/topics/stroke/treatment> (last visited Mar. 23, 2017).

¹⁸ Id. Such medication includes a tissue plasminogen activator (TPA), which dissolves, or breaks up the clot. TPA is an injection that must be given within 4 hours of stroke symptoms onset.

¹⁹ Id.

²⁰ *Supra* note 16.

that patients receiving care at primary stroke centers have a higher incidence of survival and recovery than those treated in hospitals without this type of specialized care.²¹

Stroke Centers in Florida

Florida first enacted legislation relating to primary and comprehensive stroke centers in 2004.²² The AHCA establishes the criteria for both the primary and comprehensive stroke centers.²³ There are 118 Florida hospitals designated as primary stroke centers in 37 counties, and 41 comprehensive stroke centers in 16 counties.²⁴

Primary Stroke Centers

A primary stroke center certification recognizes hospitals that meet standards to support better outcomes for stroke care.²⁵ Such hospitals must have a dedicated stroke-focused program, be staffed by qualified medical professionals trained in stroke care, and provide individualized care to meet stroke patients' needs based on recommendations of the Brain Attack Coalition and guidelines published by the American Heart Association/American Stroke Association or equivalent guidelines.²⁶ These hospitals must also collect and utilize performance data to improve quality of care for stroke patients.²⁷

In order for the AHCA to designate a hospital program as a primary stroke center, the hospital program must be certified by the Joint Commission as a primary stroke center, or meet the certification criteria applicable to primary stroke centers as outlined in the Joint Commission Disease-Specific Care Certification Manual, 2nd Edition.²⁸ The manual requires a primary stroke center to:²⁹

- Use a standardized method of delivering care;
- Support patient self-management activities;
- Tailor treatment and intervention to individual needs;
- Promote the flow of patient information across settings and providers, while protecting patient rights, security and privacy;

²¹ Centers for Disease Control and Prevention, *A Summary Of Primary Stroke Center Policy In The United States* (2011), available at https://www.cdc.gov/dhds/pubs/docs/primary_stroke_center_report.pdf, (last visited Mar. 23, 2017)

²² Section 3, ch. 2004-325, Laws of Fla.

²³ Section 395.3038, F.S.

²⁴ Agency for Health Care Administration, *Senate Bill 1406 Analysis* (Feb. 17, 2017) (on file with the Senate Committee on Health Policy). Although stroke services is dependent upon the availability of qualified health care professionals, the majority of primary stroke centers have fewer than 300 inpatient beds and the majority of comprehensive stroke centers have more than 300 beds.

²⁵ American Heart Association, *Primary Stroke Center Certification*, available at https://www.heart.org/HEARTORG/Professional/HospitalAccreditationCertification/PrimaryStrokeCenterCertification/Primary-Stroke-Center-Certification_UCM_439155_SubHomePage.jsp, (last visited Mar. 23, 2017).

²⁶ Id.

²⁷ Id.

²⁸ Rule 59A-3.2085(15)(a) F.A.C.

²⁹ The standards are published in the Comprehensive Certification Manual for Disease-Specific Care. They incorporate the "Recommendations for the Establishment of Primary Stroke Centers" developed by the Brain Attack Coalition. The chapters address program management, delivering or facilitating clinical care, supporting self-management, clinical information management, and performance improvement and measurement.

- Analyze and use standardized performance measure data to continually improve treatment plans; and
- Demonstrate their application of and compliance with clinical practice guidelines published by the American Heart Association/American Stroke Association or equivalent evidence-based guidelines.³⁰

Comprehensive Stroke Centers

A comprehensive stroke center certification recognizes hospitals that meet standards to treat the most complex stroke cases.³¹ These hospitals must meet all the criteria of a primary stroke center; they must also have advanced imaging techniques and personnel trained in vascular neurology, neurosurgery and endovascular procedures available 24 hours a day, seven days a week, as well as neuroscience intensive care unit (ICU) and experience and expertise treating patients with large ischemic strokes, intracerebral hemorrhage and subarachnoid hemorrhage.

In order for the AHCA to designate a hospital program as a comprehensive stroke center, the hospital program must have received primary stroke center designation and also have the following:

- Personnel with clinical expertise in specified disciplines available;³²
- Advanced diagnostic capabilities;³³
- Neurosurgical and endovascular interventions available;³⁴
- Specialized infrastructure;³⁵ and
- Quality improvement and clinical outcomes measurements.³⁶

The specialized infrastructure includes extensive requirements that the emergency medical services (EMS) and comprehensive stroke center leadership are linked to ensure:

- EMS use a stroke triage assessment tool;
- EMS patient assessment and management at the scene is consistent with evidence-based practice;
- Inter-facility transfers; and
- On-going communication with EMS providers regarding availability of services; and
- A comprehensive stroke center maintains:
 - An acute stroke team available 24 hours per day, 7 days per week;
 - A system for facilitating inter-facility transfers;
 - Defined access telephone numbers in a system for accepting appropriate transfer;

³⁰ The Joint Commission, *Facts about Primary Stroke Center Certification* (Jan. 6, 2015), available at https://www.jointcommission.org/facts_about_primary_stroke_center_certification/ (last visited Mar. 23, 2017).

³¹ The American Heart Association, *Comprehensive Stroke Center Certification*, available at https://www.heart.org/HEARTORG/Professional/HospitalAccreditationCertification/ComprehensiveStrokeCenterCertification/Comprehensive-Stroke-Center-Certification_UCM_455446_SubHomePage.jsp, (last visited Mar. 23, 2017).

³² See Fla. Admin. Code R. 59A-3.2085(15)(b), for specific qualifications. Medical personnel with neurosurgical expertise must be available in a CSC on a 24 hours per day, seven days per week basis and in-house within two hours, and neurologist(s) with special expertise in the management of stroke patients should be available 24 hours per day, seven days per week.

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ Id.

- Specialized inpatient units including an ICU with medical and nursing personnel who have special training, skills and knowledge in the management of patients with all forms of neurological or neurosurgical conditions that require intensive care;
- An acute stroke unit with medical and nursing personnel who have training, skills and knowledge sufficient to care for patients with neurological conditions, particularly acute stroke patients, and who are appropriately trained in neurological assessment and management;
- Inpatient post-stroke rehabilitation and ensure continuing arrangements post-discharge for rehabilitation needs and medical management;
- Its medical and paramedical professionals education by offering ongoing professional education for all disciplines; and provide education to the public and inpatients and families on risk factor reduction or management, primary and secondary prevention, the warning signs and symptoms of stroke, and medical management and rehabilitation for stroke patients;
- Provide a career development track to develop neuroscience nursing, particularly in the area of cerebrovascular disease; and
- Professional and administrative infrastructure necessary to conduct clinical trials and should have participated in stroke clinical trials within the last year and actively participate in ongoing clinical stroke trials.³⁷

Stroke Patient Transportation

The DOH has also developed a stroke assessment tool.³⁸ The tool is available on the DOH's website and is provided to emergency medical services providers.³⁹ Each licensed emergency medical services provider must use a stroke-triage assessment tool that is substantially similar to the DOH's stroke-triage assessment tool.⁴⁰ Annually, by June 1, each year the DOH sends the list of primary stroke centers and comprehensive stroke centers to the medical director of each licensed emergency medical services provider in Florida.⁴¹

Stroke Center Inventory

The AHCA maintains an inventory of hospitals offering stroke services.⁴² A listing of hospitals meeting the criteria as either a primary stroke center or comprehensive stroke center is published on the AHCA's website.^{43,44}

Currently, there are no data reporting requirements for stroke centers related to quality measures.⁴⁵ There are 274 emergency medical service providers, 222 acute care hospitals and 25 medical examiner districts that report patient data to the DOH.⁴⁶ However, the data is not

³⁷ Id.

³⁸ Section 395.3041(2), F.S.

³⁹ Section 395.3041(2), F.S.

⁴⁰ Id.

⁴¹ Section 395.3041(1), F.S.

⁴² Section 395.3038, F.S.

⁴³ *Supra* note 24.

⁴⁴ Id. A list of hospitals with a stroke center designation is also available through the facility locator tool on www.floridahealthfinder.gov, (last visited Mar. 23, 2017).

⁴⁵ Id.

⁴⁶ *Supra* note 24.

standardized and much of the data that the DOH currently collects comes from voluntary participation in the DOH's EMS Tracking and Reporting System (EMSTARS) program⁴⁷ and only includes data on response, provider impression, procedures and medication, and destination.⁴⁸

Acute Stroke Ready Centers

Many patients with an acute stroke live in areas without ready access to a primary or comprehensive stroke center; more than half the U.S. population lives more than an hour away from a stroke center.⁴⁹ Hospitals in areas with low population densities and relatively small numbers of patients with strokes may be less likely to have the resources to become a stroke center and may lack the experience and expertise to provide ongoing care for a stroke.⁵⁰ In such settings, there is a need to distinguish between those that offer enhanced care and expertise for acute stroke versus those with only basic or no organized abilities and expertise.⁵¹

A recent study by the American Stroke Association proposed a new designation for hospitals that are not primary stroke centers, but can provide timely, evidence-based care to most patients with an acute stroke; these acute stroke-ready hospitals provide initial diagnostic services, stabilization, emergent care and therapies to patients with an acute stroke who are seen in their emergency department, and would then transfer these patients to a primary or comprehensive stroke center.⁵²

Accrediting Organizations

The Joint Commission, the Healthcare Facilities Accreditation Program, and the DNV GL (formerly known as Det Norske Veritas) offer certification as an acute stroke ready centers, as well as primary and comprehensive stroke centers.⁵³

III. Effect of Proposed Changes:

Acute Stroke Ready Centers

Section 1 amends s. 395.3038, F.S., to recognize a new level of stroke services: an acute stroke ready center. A hospital could receive an acute stroke ready center designation by attesting to the ACHA on the appropriate form that, among other things, it is accredited by a nationally recognized accrediting organization or meets the criteria for accreditation. A hospital with an acute stroke ready center designation is required to notify the ACHA if it no longer meets the criteria.

⁴⁷ The EMSTARS program allows emergency medical providers to capture incident level patient care records for every emergency activation.

⁴⁸ *Supra* note 46.

⁴⁹ Mark J. Alberts, et al, *Formation and Function of Acute Stroke-Ready Hospitals Within a Stroke System of Care Recommendations From the Brain Attack Coalition*, *Stroke*, Vol. 44, Issue 12 (Nov. 25, 2013), available at <http://stroke.ahajournals.org/content/44/12/3382.full>, (last visited Mar. 23, 2017).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Supra* note 24.

The bill removes language instructing the ACHA to base stroke center rules on criteria established solely by the Joint Commission; and expands criteria to be substantially similar to any nationally recognized accreditation organization's criteria for the level of stroke center.

Acute stroke ready centers must be added to the list of stroke centers the DOH supplies to emergency medical services providers in the state. The bill requires the AHCA to develop and adopt by rule electronic standardized forms for stroke centers to report data to the DOH, including patient care quality assurance proceedings, records, or reports associated with any treatment or service provided to a person suffering a stroke.

Currently, there are approximately 60 acute care hospitals that do not have primary or comprehensive stroke center designation and may be eligible for an acute stroke ready center designation. The majority of these hospitals have less than 100 beds.⁵⁴

Statewide Stroke Registry

Section 2 creates the 395.3081, F.S., relating to statewide stroke registry, to require the DOH to contract, subject to an appropriation, with a private entity to establish and maintain a statewide stroke registry to ensure that the stroke performance measures required to be submitted are maintained and available for use to improve or modify the stroke care system. This provider is required to use a nationally recognized platform to collect data from each stroke center on the performance measures and provide regular reports to the department. Requires each stroke center, primary stroke center, and comprehensive stroke center to regularly report to the statewide stroke registry information specified by the department, including nationally recognized stroke performance measures. Provides immunity from liability of any kind or character for damages against any acute ready stroke center, primary stroke center, or comprehensive stroke center for having provided such information to the statewide stroke registry.

Section 3 amends s. 395.3041, F.S., to remove obsolete deadlines for the DOH to implement the stroke-triage assessment tool. This section also directs the DOH to include the acute stroke ready centers on the list of stroke-related facilities to the licensed emergency medical services providers in the state.

The bill provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁵⁴See The Joint Commission, *Certification for Primary Stroke Centers*, available at https://www.jointcommission.org/certification/primary_stroke_centers.aspx, and *Certification Comprehensive Stroke Centers*, available at https://www.jointcommission.org/certification/advanced_certification_comprehensive_stroke_centers.aspx (last visited Mar. 28, 2017); DNV-GL, *Healthcare*, available at <http://dnvglhealthcare.com/search?q=stroke+centers&s=rank>; and Healthcare Facilities Accreditation Program, available at <http://www.hfap.org/AccreditationPrograms/stroke.aspx>, (last visited Mar. 28, 2017).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Public hospitals that are required to submit data to the DOH under the bill, may be required to purchase new software and incur labor costs to collect, maintain and send the required data to the DOH. The estimated cost of this is unknown at this time.

C. Government Sector Impact:

The DOH will incur rulemaking costs to implement the registry. The DOH may also incur costs to develop and maintain the registry or to contract with a private entity to establish and maintain the registry. There is no appropriation provided in the bill to establish the registry.

The AHCA will incur rulemaking costs related to updating criteria for acute stroke ready centers and comprehensive stroke centers. According to the AHCA, current resources can absorb these costs.⁵⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

A public records exemption (separate bill) may be necessary to protect the confidentiality of information in the statewide stroke registry.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 395.3038 and 395.3041.

This bill creates section 395.30381 of the Florida Statutes.

⁵⁵ *Supra* note 24.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Health and Human Services on April 18, 2017:

The committee substitute:

- Creates 395.3081, F.S., related to statewide stroke registry.
- Requires that, subject to appropriation, the DOH is to contract with a private entity to establish and maintain a statewide stroke registry to ensure that the stroke performance measures required to be submitted are maintained and available for use to improve or modify the stroke care system. This provider is required to use a nationally recognized platform to collect data from each stroke center on the performance measures and provide regular reports to the department.
- Requires each stroke center, primary stroke center, and comprehensive stroke center to regularly report to the statewide stroke registry information specified by the department, including nationally recognized stroke performance measures.
- Provides immunity from liability of any kind or character for damages against any acute ready stroke center, primary stroke center, or comprehensive stroke center for having provided such information to the statewide stroke registry.

CS by Health Policy on March 27, 2017:

Deletes emergency medical services providers and medical examiners from the list of entities required to submit to the DOH patient care quality assurance proceedings, records, or reports associated with any treatment or services provided to a person suffering a stroke.

- B. **Amendments:**

None.



787872

576-04076-17

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

A bill to be entitled

An act relating to stroke centers; amending s. 395.3038, F.S.; directing the Agency for Health Care Administration to include hospitals that meet the criteria for acute stroke ready centers on a list of stroke centers; creating s. 395.30381, F.S.; requiring the department to contract with a private entity to establish and maintain a statewide stroke registry, subject to an appropriation; requiring stroke centers to provide certain information to the statewide stroke registry; requiring the contracted entity to use a nationally recognized platform to collect data; requiring the contracted entity to provide reports to the department on stroke performance measures; providing immunity from liability under certain circumstances; amending s. 395.3041, F.S.; conforming a provision and deleting obsolete dates; providing an effective date.

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

Section 1. Section 395.3038, Florida Statutes, is amended to read:

395.3038 State-listed ~~primary stroke centers and comprehensive~~ stroke centers; notification of hospitals.-

(1) The agency shall make available on its website and to the department a list of the name and address of each hospital



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that meets the criteria for an acute stroke ready center, a primary stroke center, ~~or and the name and address of each hospital that meets the criteria for~~ a comprehensive stroke center. The list of ~~primary and comprehensive~~ stroke centers must include only those hospitals that attest in an affidavit submitted to the agency that the hospital meets the named criteria, or those hospitals that attest in an affidavit submitted to the agency that the hospital is certified as an acute stroke ready center, a primary stroke center, or a comprehensive stroke center by a nationally recognized ~~an~~ accrediting organization.

(2) (a) If a hospital no longer chooses to meet the criteria for an acute stroke ready center, a primary stroke center, or a comprehensive stroke center, the hospital shall notify the agency and the agency shall immediately remove the hospital from the list of stroke centers.

(b)1. This subsection does not apply if the hospital is unable to provide stroke treatment services for a period of time not to exceed 2 months. The hospital shall immediately notify all local emergency medical services providers when the temporary unavailability of stroke treatment services begins and when the services resume.

2. If stroke treatment services are unavailable for more than 2 months, the agency shall remove the hospital from the list of ~~primary or comprehensive~~ stroke centers until the hospital notifies the agency that stroke treatment services have been resumed.

(3) The agency shall adopt by rule criteria for an acute stroke ready center, a primary stroke center, and a



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57 comprehensive stroke center which are substantially similar to
58 the certification standards for the same categories of primary
59 stroke centers of a nationally recognized accrediting
60 organization the Joint Commission.

61 ~~(4) The agency shall adopt by rule criteria for a~~
62 ~~comprehensive stroke center. However, if the Joint Commission~~
63 ~~establishes criteria for a comprehensive stroke center, agency~~
64 ~~rules shall be substantially similar.~~

65 (4)(5) This act is not a medical practice guideline and may
66 not be used to restrict the authority of a hospital to provide
67 services for which it is licensed under chapter 395. The
68 Legislature intends that all patients be treated individually
69 based on each patient's needs and circumstances.

70 Section 2. Section 395.30381, Florida Statutes, is created
71 to read:

72 395.30381 Statewide stroke registry.-

73 (1) Subject to a specific appropriation, the department
74 shall contract with a private entity to establish and maintain a
75 statewide stroke registry to ensure that the stroke performance
76 measures required to be submitted under subsection (2) are
77 maintained and available for use to improve or modify the stroke
78 care system, ensure compliance with standards, and monitor
79 stroke patient outcomes.

80 (2) Each acute ready stroke center, primary stroke center,
81 and comprehensive stroke center shall regularly report to the
82 statewide stroke registry information specified by the
83 department, including nationally recognized stroke performance
84 measures.

85 (3) The department shall require the contracted entity to



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86 use a nationally recognized platform to collect data from each
87 stroke center on the stroke performance measures required in
88 subsection (2). The contracted entity shall provide regular
89 reports to the department on the data collected.

90 (4) No liability of any kind or character for damages or
91 other relief shall arise or be enforced against any acute ready
92 stroke center, primary stroke center, or comprehensive stroke
93 center by reason of having provided such information to the
94 statewide stroke registry.

95 Section 3. Subsections (1), (2), and (4) of section
96 395.3041, Florida Statutes, are amended to read:

97 395.3041 Emergency medical services providers; triage and
98 transportation of stroke victims to a stroke center.-

99 (1) By June 1 of each year, the department shall send the
100 list of acute stroke ready centers, primary stroke centers, and
101 comprehensive stroke centers to the medical director of each
102 licensed emergency medical services provider in this state.

103 (2) The department shall develop a sample stroke-triage
104 assessment tool. The department must post this sample assessment
105 tool on its website and provide a copy of the assessment tool to
106 each licensed emergency medical services provider ~~no later than~~
107 ~~June 1, 2005.~~ Each licensed emergency medical services provider
108 must use a stroke-triage assessment tool that is substantially
109 similar to the sample stroke-triage assessment tool provided by
110 the department.

111 (4) Each emergency medical services provider licensed under
112 chapter 401 must comply with all sections of this act ~~by July 1,~~
113 ~~2005.~~

114 Section 4. This act shall take effect July 1, 2017.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 1406

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Powell and others

SUBJECT: Stroke Centers

DATE: April 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	Fav/CS
2.	Forbes	Williams	AHS	Recommend: Fav/CS
3.	Forbes	Hansen	AP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1406 requires the Agency for Health Care Administration (ACHA) to add acute stroke ready centers to the list of primary stroke centers and comprehensive stroke centers made available to emergency medical services providers. All three levels of stroke centers are treated similarly for purposes of being added to, or removed from, the list. The bill removes language instructing the ACHA to base stroke center rules on criteria established solely by the Joint Commission; and expands rule criteria to be substantially similar to any nationally recognized accrediting organization.

The Department of Health (DOH) is directed to contract with a private entity to establish and maintain a statewide stroke registry to ensure that the stroke performance measures required to be submitted are maintained and available for use to:

- Improve or modify the stroke care system;
- Ensure compliance with standards; and
- Monitor stroke patient outcomes.

Each acute ready stroke center, primary stroke center, and comprehensive stroke center, is required to regularly report to the statewide stroke registry information specified by the department. The contract provider is required to use a nationally recognized platform to collect data from each stroke center on the performance measures and provide regular reports to DOH.

Provides immunity from liability of any kind or character for damages against any acute ready stroke center, primary stroke center, or comprehensive stroke center for having provided such information to the statewide stroke registry.

The cost to create and maintain the statewide stroke registry required by this legislation is unknown. The DOH and AHCA will incur costs associated with rulemaking, but such costs should be absorbed within current resources.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

What is a Stroke?

A stroke is a serious medical condition that occurs when the blood supply to the brain is interrupted or severely reduced, depriving brain tissue of oxygen and nutrients.¹ The brain needs a constant supply of oxygen and nutrients in order to function.² Even a brief interruption in blood supply from a stroke can cause significant problems.

During a stroke, brain cells begin to die after just a few minutes without blood or oxygen.³ Brain cell death causes loss of brain function, including impaired ability with movement, speech, thinking and memory, bowel and bladder, eating, emotional control, and other vital bodily functions. A small stroke may result in problems such as weakness in an arm or leg, whereas larger strokes may cause paralysis, loss of speech, or even death.⁴ A stroke is one of the leading causes of death in the United States.⁵

There are two main types of strokes: an ischemic stroke and a hemorrhagic stroke. The former, is the most common type, and occurs when an artery in the brain becomes blocked. The latter occurs when a brain artery leaks blood or ruptures.⁶

There are two types of ischemic strokes: thrombotic and embolic.⁷ In a thrombotic stroke, a blood clot (thrombus) forms in an artery that supplies blood to the brain.⁸ In an embolic stroke, a blood clot, or other substance such as plaque or fatty material, travels through the bloodstream to an artery in the brain.⁹ With both types of ischemic stroke, the blood clot or other substance blocks the flow of oxygenated blood to a portion of the brain.¹⁰

¹ The Mayo Clinic, *Stroke*, available at <http://www.mayoclinic.org/diseases-conditions/stroke/home/ovc-20117264>, (last visited Mar. 22, 2017).

² UCLA Health, *What is a Stroke?* available at <http://stroke.ucla.edu/what-is-a-stroke>, (last visited Mar. 23, 2017).

³ Id.

⁴ Id.

⁵ National Institutes of Health, National Heart, Lung and Blood Institute, *What Is a Stroke?* (updated Jan. 27, 2017) available at <https://www.nhlbi.nih.gov/health/health-topics/topics/stroke>, (last visited Mar. 23, 2017).

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id. The blood clot or other substance traveling through the bloodstream is called an embolus.

¹⁰ Id.

The two types of hemorrhagic stroke are intracerebral and subarachnoid.¹¹ In an intracerebral hemorrhage, a blood vessel inside the brain leaks blood or ruptures.¹² In a subarachnoid hemorrhage, a blood vessel on the surface of the brain leaks blood or ruptures, and bleeding occurs between the inner and middle layers of the membrane that covers the brain.¹³ In both types of hemorrhagic stroke, the leaked blood causes swelling of the brain and increased pressure in the skull. This swelling and pressure causes brain damage.¹⁴

Signs and Symptoms of a Stroke

The signs and symptoms of a stroke often develop quickly. However, they can develop over hours or even days as well. Signs and symptoms of a stroke may include:

- Sudden weakness;
- Paralysis (an inability to move) or numbness of the face, arms, or legs, especially on one side of the body;
- Confusion;
- Trouble speaking or understanding speech;
- Trouble seeing in one or both eyes;
- Problems breathing;
- Dizziness, trouble walking, loss of balance or coordination, and unexplained falls;
- Loss of consciousness; and
- Sudden and severe headache.¹⁵

Stroke Treatment

Time is of the essence in the treatment of a stroke. Medical personnel begin treatment in the ambulance on the way to the hospital.¹⁶ Treatment for a stroke depends on how much time has elapsed since the symptoms began to appear; and whether the stroke is ischemic or hemorrhagic.¹⁷

Treatment for an ischemic stroke may include medicines,¹⁸ such as antiplatelet medicines and blood thinners, and medical procedures, but a hemorrhagic stroke may require surgery to find and stop the bleeding.¹⁹ In addition to emergency care to treat a stroke, an individual may also receive treatment to prevent another stroke and rehabilitation to treat the side effects of the stroke.²⁰ According to the Centers for Disease Control and Prevention (CDC), research indicates

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Center for Disease Control and Prevention, *Stroke Treatment* (updated Feb. 10, 2017) available at <https://www.cdc.gov/stroke/treatments.htm>, (last visited Mar. 23, 2017).

¹⁷ National Institutes of Health, National Heart, Lung and Blood Institute, *How Is a Stroke Treated?* (updated Jan. 27, 2017) available at <https://www.nhlbi.nih.gov/health/health-topics/topics/stroke/treatment> (last visited Mar. 23, 2017).

¹⁸ Id. Such medication includes a tissue plasminogen activator (TPA), which dissolves, or breaks up the clot. TPA is an injection that must be given within 4 hours of stroke symptoms onset.

¹⁹ Id.

²⁰ *Supra* note 16.

that patients receiving care at primary stroke centers have a higher incidence of survival and recovery than those treated in hospitals without this type of specialized care.²¹

Stroke Centers in Florida

Florida first enacted legislation relating to primary and comprehensive stroke centers in 2004.²² The AHCA establishes the criteria for both the primary and comprehensive stroke centers.²³ There are 118 Florida hospitals designated as primary stroke centers in 37 counties, and 41 comprehensive stroke centers in 16 counties.²⁴

Primary Stroke Centers

A primary stroke center certification recognizes hospitals that meet standards to support better outcomes for stroke care.²⁵ Such hospitals must have a dedicated stroke-focused program, be staffed by qualified medical professionals trained in stroke care, and provide individualized care to meet stroke patients' needs based on recommendations of the Brain Attack Coalition and guidelines published by the American Heart Association/American Stroke Association or equivalent guidelines.²⁶ These hospitals must also collect and utilize performance data to improve quality of care for stroke patients.²⁷

In order for the AHCA to designate a hospital program as a primary stroke center, the hospital program must be certified by the Joint Commission as a primary stroke center, or meet the certification criteria applicable to primary stroke centers as outlined in the Joint Commission Disease-Specific Care Certification Manual, 2nd Edition.²⁸ The manual requires a primary stroke center to:²⁹

- Use a standardized method of delivering care;
- Support patient self-management activities;
- Tailor treatment and intervention to individual needs;
- Promote the flow of patient information across settings and providers, while protecting patient rights, security and privacy;

²¹ Centers for Disease Control and Prevention, *A Summary Of Primary Stroke Center Policy In The United States* (2011), available at https://www.cdc.gov/dhdsdp/pubs/docs/primary_stroke_center_report.pdf, (last visited Mar. 23, 2017)

²² Section 3, ch. 2004-325, Laws of Fla.

²³ Section 395.3038, F.S.

²⁴ Agency for Health Care Administration, *Senate Bill 1406 Analysis* (Feb. 17, 2017) (on file with the Senate Committee on Health Policy). Although stroke services is dependent upon the availability of qualified health care professionals, the majority of primary stroke centers have fewer than 300 inpatient beds and the majority of comprehensive stroke centers have more than 300 beds.

²⁵ American Heart Association, *Primary Stroke Center Certification*, available at https://www.heart.org/HEARTORG/Professional/HospitalAccreditationCertification/PrimaryStrokeCenterCertification/Primary-Stroke-Center-Certification_UCM_439155_SubHomePage.jsp, (last visited Mar. 23, 2017).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Rule 59A-3.2085(15)(a) F.A.C.

²⁹ The standards are published in the Comprehensive Certification Manual for Disease-Specific Care. They incorporate the "Recommendations for the Establishment of Primary Stroke Centers" developed by the Brain Attack Coalition. The chapters address program management, delivering or facilitating clinical care, supporting self-management, clinical information management, and performance improvement and measurement.

- Analyze and use standardized performance measure data to continually improve treatment plans; and
- Demonstrate their application of and compliance with clinical practice guidelines published by the American Heart Association/American Stroke Association or equivalent evidence-based guidelines.³⁰

Comprehensive Stroke Centers

A comprehensive stroke center certification recognizes hospitals that meet standards to treat the most complex stroke cases.³¹ These hospitals must meet all the criteria of a primary stroke center; they must also have advanced imaging techniques and personnel trained in vascular neurology, neurosurgery and endovascular procedures available 24 hours a day, seven days a week, as well as neuroscience intensive care unit (ICU) and experience and expertise treating patients with large ischemic strokes, intracerebral hemorrhage and subarachnoid hemorrhage.

In order for the AHCA to designate a hospital program as a comprehensive stroke center, the hospital program must have received primary stroke center designation and also have the following:

- Personnel with clinical expertise in specified disciplines available;³²
- Advanced diagnostic capabilities;³³
- Neurosurgical and endovascular interventions available;³⁴
- Specialized infrastructure;³⁵ and
- Quality improvement and clinical outcomes measurements.³⁶

The specialized infrastructure includes extensive requirements that the emergency medical services (EMS) and comprehensive stroke center leadership are linked to ensure:

- EMS use a stroke triage assessment tool;
- EMS patient assessment and management at the scene is consistent with evidence-based practice;
- Inter-facility transfers; and
- On-going communication with EMS providers regarding availability of services; and
- A comprehensive stroke center maintains:
 - An acute stroke team available 24 hours per day, 7 days per week;
 - A system for facilitating inter-facility transfers;
 - Defined access telephone numbers in a system for accepting appropriate transfer;

³⁰ The Joint Commission, *Facts about Primary Stroke Center Certification* (Jan. 6, 2015), available at https://www.jointcommission.org/facts_about_primary_stroke_center_certification/ (last visited Mar. 23, 2017).

³¹ The American Heart Association, *Comprehensive Stroke Center Certification*, available at https://www.heart.org/HEARTORG/Professional/HospitalAccreditationCertification/ComprehensiveStrokeCenterCertification/Comprehensive-Stroke-Center-Certification_UCM_455446_SubHomePage.jsp, (last visited Mar. 23, 2017).

³² See Fla. Admin. Code R. 59A-3.2085(15)(b), for specific qualifications. Medical personnel with neurosurgical expertise must be available in a CSC on a 24 hours per day, seven days per week basis and in-house within two hours, and neurologist(s) with special expertise in the management of stroke patients should be available 24 hours per day, seven days per week.

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ Id.

- Specialized inpatient units including an ICU with medical and nursing personnel who have special training, skills and knowledge in the management of patients with all forms of neurological or neurosurgical conditions that require intensive care;
- An acute stroke unit with medical and nursing personnel who have training, skills and knowledge sufficient to care for patients with neurological conditions, particularly acute stroke patients, and who are appropriately trained in neurological assessment and management;
- Inpatient post-stroke rehabilitation and ensure continuing arrangements post-discharge for rehabilitation needs and medical management;
- Its medical and paramedical professionals education by offering ongoing professional education for all disciplines; and provide education to the public and inpatients and families on risk factor reduction or management, primary and secondary prevention, the warning signs and symptoms of stroke, and medical management and rehabilitation for stroke patients;
- Provide a career development track to develop neuroscience nursing, particularly in the area of cerebrovascular disease; and
- Professional and administrative infrastructure necessary to conduct clinical trials and should have participated in stroke clinical trials within the last year and actively participate in ongoing clinical stroke trials.³⁷

Stroke Patient Transportation

The DOH has also developed a stroke assessment tool.³⁸ The tool is available on the DOH's website and is provided to emergency medical services providers.³⁹ Each licensed emergency medical services provider must use a stroke-triage assessment tool that is substantially similar to the DOH's stroke-triage assessment tool.⁴⁰ Annually, by June 1, each year the DOH sends the list of primary stroke centers and comprehensive stroke centers to the medical director of each licensed emergency medical services provider in Florida.⁴¹

Stroke Center Inventory

The AHCA maintains an inventory of hospitals offering stroke services.⁴² A listing of hospitals meeting the criteria as either a primary stroke center or comprehensive stroke center is published on the AHCA's website.^{43,44}

Currently, there are no data reporting requirements for stroke centers related to quality measures.⁴⁵ There are 274 emergency medical service providers, 222 acute care hospitals and 25 medical examiner districts that report patient data to the DOH.⁴⁶ However, the data is not

³⁷ Id.

³⁸ Section 395.3041(2), F.S.

³⁹ Section 395.3041(2), F.S.

⁴⁰ Id.

⁴¹ Section 395.3041(1), F.S.

⁴² Section 395.3038, F.S.

⁴³ *Supra* note 24.

⁴⁴ Id. A list of hospitals with a stroke center designation is also available through the facility locator tool on www.floridahealthfinder.gov, (last visited Mar. 23, 2017).

⁴⁵ Id.

⁴⁶ *Supra* note 24.

standardized and much of the data that the DOH currently collects comes from voluntary participation in the DOH's EMS Tracking and Reporting System (EMSTARS) program⁴⁷ and only includes data on response, provider impression, procedures and medication, and destination.⁴⁸

Acute Stroke Ready Centers

Many patients with an acute stroke live in areas without ready access to a primary or comprehensive stroke center; more than half the U.S. population lives more than an hour away from a stroke center.⁴⁹ Hospitals in areas with low population densities and relatively small numbers of patients with strokes may be less likely to have the resources to become a stroke center and may lack the experience and expertise to provide ongoing care for a stroke.⁵⁰ In such settings, there is a need to distinguish between those that offer enhanced care and expertise for acute stroke versus those with only basic or no organized abilities and expertise.⁵¹

A recent study by the American Stroke Association proposed a new designation for hospitals that are not primary stroke centers, but can provide timely, evidence-based care to most patients with an acute stroke; these acute stroke-ready hospitals provide initial diagnostic services, stabilization, emergent care and therapies to patients with an acute stroke who are seen in their emergency department, and would then transfer these patients to a primary or comprehensive stroke center.⁵²

Accrediting Organizations

The Joint Commission, the Healthcare Facilities Accreditation Program, and the DNV GL (formerly known as Det Norske Veritas) offer certification as an acute stroke ready centers, as well as primary and comprehensive stroke centers.⁵³

III. Effect of Proposed Changes:

Acute Stroke Ready Centers

Section 1 amends s. 395.3038, F.S., to recognize a new level of stroke services: an acute stroke ready center. A hospital could receive an acute stroke ready center designation by attesting to the ACHA on the appropriate form that, among other things, it is accredited by a nationally recognized accrediting organization or meets the criteria for accreditation. A hospital with an acute stroke ready center designation is required to notify the ACHA if it no longer meets the criteria.

⁴⁷ The EMSTARS program allows emergency medical providers to capture incident level patient care records for every emergency activation.

⁴⁸ *Supra* note 46.

⁴⁹ Mark J. Alberts, et al, *Formation and Function of Acute Stroke-Ready Hospitals Within a Stroke System of Care Recommendations From the Brain Attack Coalition*, *Stroke*, Vol. 44, Issue 12 (Nov. 25, 2013), available at <http://stroke.ahajournals.org/content/44/12/3382.full>, (last visited Mar. 23, 2017).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Supra* note 24.

The bill removes language instructing the ACHA to base stroke center rules on criteria established solely by the Joint Commission; and expands criteria to be substantially similar to any nationally recognized accreditation organization's criteria for the level of stroke center.

Acute stroke ready centers must be added to the list of stroke centers the DOH supplies to emergency medical services providers in the state. The bill requires the AHCA to develop and adopt by rule electronic standardized forms for stroke centers to report data to the DOH, including patient care quality assurance proceedings, records, or reports associated with any treatment or service provided to a person suffering a stroke.

Currently, there are approximately 60 acute care hospitals that do not have primary or comprehensive stroke center designation and may be eligible for an acute stroke ready center designation. The majority of these hospitals have less than 100 beds.⁵⁴

Statewide Stroke Registry

Section 2 creates the 395.3081, F.S., relating to statewide stroke registry, to require the DOH to contract, subject to an appropriation, with a private entity to establish and maintain a statewide stroke registry to ensure that the stroke performance measures required to be submitted are maintained and available for use to improve or modify the stroke care system. This provider is required to use a nationally recognized platform to collect data from each stroke center on the performance measures and provide regular reports to the department. Requires each stroke center, primary stroke center, and comprehensive stroke center to regularly report to the statewide stroke registry information specified by the department, including nationally recognized stroke performance measures. Provides immunity from liability of any kind or character for damages against any acute ready stroke center, primary stroke center, or comprehensive stroke center for having provided such information to the statewide stroke registry.

Section 3 amends s. 395.3041, F.S., to remove obsolete deadlines for the DOH to implement the stroke-triage assessment tool. This section also directs the DOH to include the acute stroke ready centers on the list of stroke-related facilities to the licensed emergency medical services providers in the state.

The bill provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁵⁴See The Joint Commission, *Certification for Primary Stroke Centers*, available at https://www.jointcommission.org/certification/primary_stroke_centers.aspx, and *Certification Comprehensive Stroke Centers*, available at https://www.jointcommission.org/certification/advanced_certification_comprehensive_stroke_centers.aspx (last visited Mar. 28, 2017); DNV-GL, *Healthcare*, available at <http://dnvglhealthcare.com/search?q=stroke+centers&s=rank>; and Healthcare Facilities Accreditation Program, available at <http://www.hfap.org/AccreditationPrograms/stroke.aspx>, (last visited Mar. 28, 2017).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Public hospitals that are required to submit data to the DOH under the bill, may be required to purchase new software and incur labor costs to collect, maintain and send the required data to the DOH. The estimated cost of this is unknown at this time.

C. Government Sector Impact:

The DOH will incur rulemaking costs to implement the registry. The DOH may also incur costs to develop and maintain the registry or to contract with a private entity to establish and maintain the registry. There is no appropriation provided in the bill to establish the registry.

The AHCA will incur rulemaking costs related to updating criteria for acute stroke ready centers and comprehensive stroke centers. According to the AHCA, current resources can absorb these costs.⁵⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

A public records exemption (separate bill) may be necessary to protect the confidentiality of information in the statewide stroke registry.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 395.3038 and 395.3041.

This bill creates section 395.30381 of the Florida Statutes.

⁵⁵ *Supra* note 24.

IX. Additional Information:

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

CS/CS by Appropriations on April 20, 2017:

The committee substitute:

- Creates 395.3081, F.S., related to statewide stroke registry.
- Requires that, subject to appropriation, the DOH is to contract with a private entity to establish and maintain a statewide stroke registry to ensure that the stroke performance measures required to be submitted are maintained and available for use to improve or modify the stroke care system. This provider is required to use a nationally recognized platform to collect data from each stroke center on the performance measures and provide regular reports to the department.
- Requires each stroke center, primary stroke center, and comprehensive stroke center to regularly report to the statewide stroke registry information specified by the department, including nationally recognized stroke performance measures.
- Provides immunity from liability of any kind or character for damages against any acute ready stroke center, primary stroke center, or comprehensive stroke center for having provided such information to the statewide stroke registry.

CS by Health Policy on March 27, 2017:

Deletes emergency medical services providers and medical examiners from the list of entities required to submit to the DOH patient care quality assurance proceedings, records, or reports associated with any treatment or services provided to a person suffering a stroke.

- B. **Amendments:**

None.

By the Committee on Health Policy; and Senators Powell,
Passidomo, and Baxley

588-02959A-17

20171406c1

A bill to be entitled

An act relating to stroke centers; amending s. 395.3038, F.S.; directing the Agency for Health Care Administration to include hospitals that meet the criteria for acute stroke ready centers on a list of stroke centers; directing the agency to adopt rules governing such criteria and the development of certain electronic forms to provide reports to the Department of Health; creating s. 395.30381, F.S.; requiring stroke centers to provide certain information to the department; requiring the department to establish a statewide stroke registry; providing immunity from liability under certain circumstances; requiring the department to adopt rules; amending s. 395.3041, F.S.; conforming a provision and deleting obsolete dates; providing an effective date.

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

Section 1. Section 395.3038, Florida Statutes, is amended to read:

395.3038 State-listed ~~primary stroke centers and comprehensive~~ stroke centers; notification of hospitals.-

(1) The agency shall make available on its website and to the department a list of the name and address of each hospital that meets the criteria for an acute stroke ready center, a primary stroke center, ~~or and the name and address of each hospital that meets the criteria for~~ a comprehensive stroke center. The list of ~~primary and comprehensive~~ stroke centers

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

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must include only those hospitals that attest in an affidavit submitted to the agency that the hospital meets the named criteria, or those hospitals that attest in an affidavit submitted to the agency that the hospital is certified as an acute stroke ready center, a primary stroke center, or a comprehensive stroke center by a nationally recognized ~~an~~ accrediting organization.

(2) (a) If a hospital no longer chooses to meet the criteria for an acute stroke ready center, a primary stroke center, or a comprehensive stroke center, the hospital shall notify the agency and the agency shall immediately remove the hospital from the list of stroke centers.

(b)1. This subsection does not apply if the hospital is unable to provide stroke treatment services for a period of time not to exceed 2 months. The hospital shall immediately notify all local emergency medical services providers when the temporary unavailability of stroke treatment services begins and when the services resume.

2. If stroke treatment services are unavailable for more than 2 months, the agency shall remove the hospital from the list of ~~primary or comprehensive~~ stroke centers until the hospital notifies the agency that stroke treatment services have been resumed.

(3) The agency shall adopt by rule criteria for an acute stroke ready center, a primary stroke center, and a comprehensive stroke center which are substantially similar to the certification standards for the same categories of primary stroke centers of a nationally recognized accrediting organization ~~the Joint Commission~~.

Page 2 of 4

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

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59 ~~(4) The agency shall adopt by rule criteria for a~~
 60 ~~comprehensive stroke center. However, if the Joint Commission~~
 61 ~~establishes criteria for a comprehensive stroke center, agency~~
 62 ~~rules shall be substantially similar.~~

63 ~~(4)(5)~~ This act is not a medical practice guideline and may
 64 not be used to restrict the authority of a hospital to provide
 65 services for which it is licensed under chapter 395. The
 66 Legislature intends that all patients be treated individually
 67 based on each patient's needs and circumstances.

68 (5) The agency shall adopt by rule standardized electronic
 69 forms for each acute stroke ready center, primary stroke center,
 70 and comprehensive stroke center to report to the department such
 71 information as required in s. 395.30381.

72 Section 2. Section 395.30381, Florida Statutes, is created
 73 to read:

74 395.30381 Statewide stroke registry.—

75 (1) Each acute ready stroke center, primary stroke center,
 76 and comprehensive stroke center shall submit to the department
 77 patient care quality assurance proceedings, records, or reports
 78 associated with any treatment or service provided to a person
 79 suffering a stroke. Such information shall be used to evaluate
 80 stroke care system effectiveness, ensure compliance with
 81 standards established pursuant to s. 395.3038, and monitor
 82 patient outcomes.

83 (2) The department shall establish a statewide stroke
 84 registry to ensure that patient care quality assurance
 85 proceedings, records, and reports required to be submitted under
 86 subsection (1) are maintained and available for use to improve
 87 or modify the stroke care system, ensure compliance with

Page 3 of 4

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

588-02959A-17

20171406c1

88 standards, and monitor stroke patient outcomes. The department
 89 may contract with a private entity to establish and maintain the
 90 registry. No liability of any kind or character for damages or
 91 other relief shall arise or be enforced against any acute ready
 92 stroke center, primary stroke center, or comprehensive stroke
 93 center by reason of having provided such information to the
 94 department.

95 (3) The department shall adopt rules to administer this
 96 section.

97 Section 3. Subsections (1), (2), and (4) of section
 98 395.3041, Florida Statutes, are amended to read:

99 395.3041 Emergency medical services providers; triage and
 100 transportation of stroke victims to a stroke center.—

101 (1) By June 1 of each year, the department shall send the
 102 list of acute stroke ready centers, primary stroke centers, and
 103 comprehensive stroke centers to the medical director of each
 104 licensed emergency medical services provider in this state.

105 (2) The department shall develop a sample stroke-triage
 106 assessment tool. The department must post this sample assessment
 107 tool on its website and provide a copy of the assessment tool to
 108 each licensed emergency medical services provider ~~no later than~~
 109 ~~June 1, 2005~~. Each licensed emergency medical services provider
 110 must use a stroke-triage assessment tool that is substantially
 111 similar to the sample stroke-triage assessment tool provided by
 112 the department.

113 (4) Each emergency medical services provider licensed under
 114 chapter 401 must comply with all sections of this act ~~by July 1,~~
 115 ~~2005~~.

116 Section 4. This act shall take effect July 1, 2017.

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)

4/20/17
Meeting Date

1406
Bill Number (if applicable)

Topic STROKE CENTERS

Amendment Barcode (if applicable)

Name Rivers H. Buford, III

Job Title GOVERNMENT RELATIONS DIRECTOR

Address 2851 RIMMINGTON GREEN

Phone 850-566-9119

Tallahassee FL 32308
City State Zip

Email Rivers.Buford@hennepin.org

Speaking: For Against Information

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

Representing AMERICAN HEART 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/17

Meeting Date

1406

Bill Number (if applicable)

Topic Stroke Centers

Amendment Barcode (if applicable)

Name FELY CURVA, Ph.D.

Job Title Partner, Curva's Associates LLC

Address 1212 Piedmont Dr.

Phone (850) 508-2256

Street

Tallahassee FL 32312

City

State

Zip

Email Curva@~~mindspring~~com

Speaking: For Against Information

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

Representing Budd Bell Campaign on Human Service

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 Appropriations

BILL: SB 1416

INTRODUCER: Senators Young and Passidomo

SUBJECT: Enhanced Safety for School Crossings

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Miller</u>	<u>TR</u>	Favorable
2.	<u>McKinnon</u>	<u>Pitts</u>	<u>ATD</u>	Recommend: Favorable
3.	<u>McKinnon</u>	<u>Hansen</u>	<u>AP</u>	Favorable

I. Summary:

SB 1416 requires the Florida Department of Transportation (FDOT) to evaluate the viability and cost of a uniform system of pavement markings and signage for use on all state and local arterial or collector roads within a one-mile radius of all public and private schools for the purpose of designating safe school crossing locations.

The FDOT may incur insignificant expenses associated with conducting the evaluation required by the bill.

The bill takes effect July 1, 2017.

II. Present Situation:

School Zones

Section 316.1895(1), F.S., directs the FDOT to adopt a uniform system of traffic control devices and pedestrian control devices for use on the streets and highways surrounding all schools, public and private. Pursuant to direction in s. 316.0745, F.S., the FDOT has adopted the Manual on Uniform Traffic Control Devices (MUTCD) as the uniform system.¹ The FDOT is required to transmit the manual containing all specifications and requirements with respect to the uniform system to the governing body of each county and municipality in the state. The FDOT and each county and municipality must maintain such traffic and pedestrian control devices in conformity with the uniform system.²

¹ The MUTCD is the national standard for all traffic control devices installed on any street, highway, bikeway, or private road open to travel and is intended to obtain basic uniformity of traffic control devices.

² Section 316.1895(2), F.S.

On request from the appropriate local government, the FDOT must install and maintain³ traffic and pedestrian control devices on state-maintained roads for all prekindergarten early-intervention schools that receive federal funding through the Head Start program.⁴ The FDOT must maintain a school zone located on a state-maintained primary or secondary road, but the FDOT may enter into agreements with counties or municipalities under which the local governmental entities maintain such zones.⁵ A county must maintain a school zone located outside of any municipality and on a county road. A municipality must maintain a school zone located in the municipality.⁶

Permanent signs designating school zones and school zone speed limits must be uniform in size and color and must clearly designate on the signs the times during which the restrictive speed limit is enforced. Flashing beacons activated by a time clock or other automatic device, or manually activated, may be used as an alternative to posting the times during which the restrictive speed limit is enforced. Any school zone established, or any school zone in which the signing has been replaced, on or after July 1, 2008, must have a sign stating “Speeding Fines Doubled” installed within the school zone. The FDOT is required to establish adequate standards for the sign.⁷ A school zone speed limit may not be less than 15 miles per hour except by local regulation. A school zone speed limit may not be more than 20 miles per hour in an urbanized area.⁸

Portable signs designating school zones and school zone speed limits must be uniform in size and color and may be erected on the roadway only during those hours when students are arriving at and leaving regularly scheduled school sessions. The FDOT must establish adequate standards for the signs.⁹

Safe Routes to Schools Program

The FDOT operates a Safe Routes to Schools program¹⁰ for which the FDOT has set aside \$7 million a year for 10 years beginning this year.¹¹ The FDOT describes the program as follows:

³ “Maintained” is defined with respect to any school zone to mean the care and maintenance of all school zone signs, markers, traffic control devices, and pedestrian control devices. Section 316.1895(3)(d), F.S.

⁴ Section 316.1895(3), F.S. Head Start programs promote school readiness of children ages birth to five from low-income families. See the U.S. Department of Health & Human Services website available at: <https://www.acf.hhs.gov/ohs/about/head-start>. (Last visited March 22, 2017.)

⁵ Section 316.1895(3)(a), F.S.

⁶ Section 316.1895(3)(b) and (c), F.S.

⁷ Section 316.1895(6), F.S.

⁸ Section 316.1895(5), F.S. “Urbanized area” is defined in s. 334.03, F.S., to mean a geographic region comprising as a minimum the area inside an urban place of 50,000 or more persons, as designated by the U.S. Bureau of the Census, expanded to include adjacent developed areas as provided for by Federal Highway Administration regulations. Urban areas with a population of fewer than 50,000 persons that are located within the expanded boundary of an urbanized area are not separately recognized.

⁹ Section 316.1895(7), F.S.

¹⁰ The program is authorized under s. 335.066, F.S., as the Safe *Paths* to Schools Program, but it is the same program. This program receives a portion of the 15 percent of proceeds from concession agreements for the sponsorship of state greenways and trails under s. 260.0144, F.S. A portion of the proceeds is also directed for use in the FDOT’s Traffic and Bicycle Safety Program.

¹¹ Under MAP-21, federal Highway Safety Program funds were transferred to the Surface Transportation Program for Safe Routes funding. The FDOT coordinates the statewide program using the federal funds. Telephone conversation with the FDOT staff, March 24, 2017.

Safe Routes to School is a growing movement that has taken hold in communities throughout the United States. The concept is to increase the number of children who walk or bicycle to school by funding projects that remove the barriers currently preventing them from doing so. Those barriers include lack of infrastructure, unsafe infrastructure, and a lack of programs that promote walking and bicycling through education/encouragement programs aimed at children, parents, and the community.¹²

Eligible projects include planning, design, and construction of infrastructure-related projects that will substantially improve the ability of students to walk and bicycle to school. The projects should directly support increased safety and convenience for school children in grades K-12. Eligible applicants are public, private, and tribal schools serving kindergarten through high school who have partnered with a “maintaining agency.” That agency is a government agency with the ability to:

- Enter into a legal agreement with the FDOT,
- Design and construct the project in accordance with all federal requirements,
- Provide the initial funding for the project before being reimbursed, and
- Maintain the completed infrastructure project.¹³

III. Effect of Proposed Changes:

The bill requires the FDOT to evaluate the viability and cost of a uniform system of specific, high-visibility pavement markings and signage for use on all state and local arterial roads¹⁴ and collector roads¹⁵ within a one-mile radius of all private and public schools. The bill authorizes the FDOT in its evaluation to consider implementation of new technology or innovations that enhance pedestrian and crosswalk visibility.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹² See the FDOT’s website available at: http://www.fdot.gov/safety/2A-Programs/Safe-Routes_Funding.shtm. (Last visited March 22, 2017.)

¹³ See the FDOT’s website for additional details available at: http://www.fdot.gov/safety/2A-Programs/Safe-Routes_ProgramGuidelines.shtm. (Last visited March 22, 2017.)

¹⁴ Section 334.03(1), F.S., defines “arterial road” as a route providing service which is relatively continuous and of relatively high traffic volume, long average trip length, high operating speed, and high mobility importance. Every United States numbered highway is an arterial road.

¹⁵ Defined in s. 334.03(4), F.S., as a route providing service which is of relatively moderate average traffic volume, moderately average trip length, and moderately average operating speed. Such a route also collects and distributes traffic between local roads or arterial roads and serves as a linkage between land access and mobility needs.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDOT may incur insignificant expenses associated with conducting the evaluation required by the bill.

VI. Technical Deficiencies:

The bill requires the FDOT to conduct the specified evaluation but does not require a report on its evaluation to be provided to a specific entity.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 316.1896 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 Young

18-01248A-17

20171416__

1 A bill to be entitled

2 An act relating to enhanced safety for school
3 crossings; creating s. 316.1896, F.S.; requiring the
4 Department of Transportation to evaluate the viability
5 and cost of a uniform system of high-visibility
6 markings and signage for designation of safe school
7 crossings, subject to certain requirements;
8 authorizing the department to consider in its
9 evaluation implementation of new technology or
10 innovations that enhance pedestrian and crosswalk
11 visibility; providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 316.1896, Florida Statutes, is created
16 to read:

17 316.1896 Safe school crossing locations; evaluation by
18 Department of Transportation.—The Department of Transportation
19 shall evaluate the viability and cost of a uniform system of
20 specific, high-visibility pavement markings and signage for use
21 on arterial roads or collector roads, as defined in s. 334.03,
22 within a 1-mile radius of all schools, public and private, to
23 designate safe school crossing locations. In its evaluation, the
24 department may consider implementation of new technology or
25 innovations that enhance pedestrian and crosswalk visibility.

26 Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12
Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG

18th District

April 14, 2017

Senator Jack Latvala, Chair
Senate Appropriations Committee
201 The Capitol
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chairman Latvala,

My Senate Bill 1416, Enhanced Safety for School Crossings has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Thank you for your consideration of this request. If I need to provide you with more information, please do not hesitate to contact me.

Sincerely,



Dana Young
State Senator – 18th District

cc: Mike Hansen, Staff Director – Senate Appropriations Committee

REPLY TO:

- 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 1452

INTRODUCER: Transportation Committee and Senator Book

SUBJECT: Taximeters

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Miller</u>	<u>TR</u>	Fav/CS
2.	<u>Blizzard</u>	<u>Betta</u>	<u>AEN</u>	Recommend: Favorable
3.	<u>Blizzard</u>	<u>Hansen</u>	<u>AP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1452 excludes taximeters and transportation measurement systems from the definition of “weights and measures” for purposes of state regulation by the Department of Agriculture and Consumer Services (DACs). A taximeter is a device that automatically calculates at a predetermined rate or rates and indicates the charge for hire of a vehicle.

As conforming changes, the bill deletes provisions that:

- Exempt such devices from state permit requirements if regulated by a local government, and
- Subject taximeters to a \$50 maximum state permit fee.

In effect, the bill will no longer require taximeters or other devices that measure time and distance to charge a fare for the transportation of persons in a motor vehicle, to be inspected or permitted by the DACs.

The bill will reduce revenues deposited into the General Inspection Trust Fund within the DACs by \$129,500 due to the elimination of taximeter permit fees. However, the trust fund can sustain the revenue reduction associated with the elimination of the costs of regulation of the taximeters.

The bill takes effect July 1, 2017.

II. Present Situation:

Currently, the Bureau of Standards within the Department of Agriculture and Consumer Services (DACS) is generally responsible for the inspection of weights and measures devices or instruments in Florida.¹ Section 531.37(1), F.S., defines “weights and measures” as all weights and measures of every kind, instruments, and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices. The definition excludes those weights and measures used to inspect the accuracy of devices used in conjunction with aviation fuel.²

The DACS’ responsibilities concerning weights and measures includes, but are not limited to:

- Establishing standards of weight, measure, or count and reasonable standards of fill for packaged commodities, as necessary;
- Providing exemptions to ch. 531, F.S., when appropriate to maintain good commercial practices within the state;
- Conducting investigations necessary to ensure compliance with ch. 531, F.S.;
- Testing annually the standards of weight and measure used by any city or county; and
- Inspecting and testing weights and measures commercially used to determine weight, measure, or count of goods being sold, or in computing the charge or payment for services rendered on the basis of weight, measure, or count.³

For the purpose of consumer protection, the Bureau of Standards within the DACS is also empowered under s. 531.42, F.S., to enforce the proper use of weights and measuring instruments or devices and the advertisement of the correct weight or measurement on a good for sale.

Taximeters

A taximeter is a device that automatically calculates at a predetermined rate or rates and indicates the charge for hire of a vehicle.⁴

A weights and measures instrument or device, which includes taximeters, may not be used for commercial purposes within the state without first being permitted by the DACS.⁵ Section 531.63, F.S., provides that the commercial use permit fee, which is issued annually, for a taximeter may not exceed \$50. Currently, the annual permit fee for such taximeters is \$35.⁶ According to the DACS, it currently permits approximately 3,700 taximeters annually.⁷

¹ See ch. 531, F.S., “Weights and Measures Act of 1971.”

² Section 531.37(1), F.S.

³ Section 531.41, F.S.

⁴ U.S. Department of Commerce, National Institute of Standards and Technology, *Handbook 44, Section 5.54 Taximeters* (2012), <https://www.nist.gov/sites/default/files/documents/pml/wmd/pubs/2011/10/26/5-54-12-hb44-final.pdf> (last visited Mar. 24, 2017).

⁵ Section 531.60, F.S.

⁶ DACS, *Laws and Rules – Bureau of Standards* (January 2015), available at http://www.freshfromflorida.com/content/download/42262/890253/2015_STANDARDS_LAWS_&_RULES.pdf at p. 33 (last visited Mar. 24, 2017).

⁷ DACS, *SB 1452 Agency Analysis* (Mar. 13, 2017) (on file with the Senate Committee on Transportation).

However, taximeters are exempt from such state permitting requirements if the taximeter is tested for accuracy and compliance with state standards by a local government and licensed, permitted, or registered by such local government.⁸ The extent of local government regulation and permitting of taximeters is unknown.

III. Effect of Proposed Changes:

Section 1 amends s. 531.37, F.S., to exclude taximeters and transportation measurement systems from the definition of “weights and measures” provided in s. 531.37(1), F.S.

Because taximeters would no longer be subject to state regulation, section 2 amends s. 531.61, F.S., to delete language that exempts taximeters from state weights and measures permit requirements if the device is locally regulated.

In addition, section 3 amends s. 561.63, F.S., to remove taximeters from a list of weights and measure instruments subject to a commercial use permit fee (of up to \$50 in this case).

In effect, the bill will no longer require taximeters or other transportation measurement systems to be inspected or permitted by the DACS.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Taxi drivers and other individuals who are currently required to have their weights and measures device permitted by DACS to transport persons in a motor vehicle for a fare

⁸ Section 531.61(1), F.S.

will save the fees associated with the DACS permitting process. However, these savings may be offset to the extent local governments increase regulation of these devices.

C. Government Sector Impact:

The DACS expects to lose roughly \$129,500 annually beginning in Fiscal Year 2017-2018 due to the loss of taximeter permit fees.⁹ However, as an offset to the lost revenues, the DACS will no longer incur administrative costs or expenses related to the regulation and permitting of taximeters. The General Inspection Trust Fund can sustain the reduction in permit fee revenues and the expenditures related to the regulation of taximeters.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 531.37, 531.61, and 531.63.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Transportation on March 28, 2017:

The CS removes that “any device that measures time and distance for the purpose of charging a fare for the transportation of persons in a motor vehicle” is excluded from the definition of “weights and measures,” and instead provides that “taximeters and transportation measurement systems” are excluded.

B. Amendments:

None.

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

⁹ DACS, *SB 1452 Agency Analysis* (Mar. 13, 2017) (on file with the Senate Committee on Transportation).

By the Committee on Transportation; and Senator Book

596-03005-17

20171452c1

1 A bill to be entitled
2 An act relating to taximeters; amending s. 531.37,
3 F.S.; revising the definition of the term "weights and
4 measures"; amending s. 531.61, F.S.; deleting a
5 provision exempting certain taximeters from specified
6 permit requirements; amending s. 531.63, F.S.;
7 deleting a provision prohibiting the annual permit
8 fees for taximeters from exceeding \$50; providing an
9 effective date.

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

11 Section 1. Subsection (1) of section 531.37, Florida
12 Statutes, is amended to read:

13 531.37 Definitions.—As used in this chapter:

14 (1) "Weights and measures" means all weights and measures
15 of every kind, instruments, and devices for weighing and
16 measuring, and any appliance and accessories associated with any
17 or all such instruments and devices, excluding taximeters,
18 transportation measurement systems, and those weights and
19 measures used for the purpose of inspecting the accuracy of
20 devices used in conjunction with aviation fuel.

21 Section 2. Subsection (1) of section 531.61, Florida
22 Statutes, is amended, and present subsections (2) and (3) of
23 that section are redesignated as subsections (1) and (2),
24 respectively, to read:

25 531.61 Exemptions from permit requirement.—Commercial
26 weights or measures instruments or devices are exempt from the
27 requirements of ss. 531.60-531.66 if:
28
29

596-03005-17

20171452c1

30 ~~(1) The device is a taximeter that is licensed, permitted,~~
31 ~~or registered by a municipality, county, or other local~~
32 ~~government and is tested for accuracy and compliance with state~~
33 ~~standards by the local government in cooperation with the state~~
34 ~~as authorized in s. 531.421.~~

35 Section 3. Paragraph (g) of subsection (2) of section
36 531.63, Florida Statutes, is amended, and present paragraphs (h)
37 and (i) of that subsection are redesignated as paragraphs (g)
38 and (h), respectively, to read:

39 531.63 Maximum permit fees.—The commercial use permit fees
40 established for weights or measures instruments or devices shall
41 be in an amount necessary to administer this chapter but may not
42 exceed the amounts provided in this section.

43 (2) For other measuring devices, the annual permit fees per
44 device may not exceed the following:

45 ~~(g) Taximeters.....\$50.~~

46 Section 4. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Environmental Preservation and
Conservation, *Chair*
Appropriations Subcommittee on the Environment
and Natural Resources, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and
Human Services
Health Policy
Rules

SENATOR LAUREN FRANCES BOOK

Democratic Leader Pro Tempore
32nd District

April 13, 2017

The Honorable Jack Latvala
Chair
Senate Appropriations

Via Email

Dear Chair Latvala:

Senate Bill CS/SB 1452 passed unanimously out of the Appropriations Subcommittee on the Environment and Natural Resources today. The next reference is Appropriations.

I would appreciate it if you would place the bill on your next agenda.

Thank you for your consideration.

Sincerely,

Lauren Book
Senator, District 32

Mr. Mike Hansen, Staff Director
Ms. Alicia Weiss, Committee Administrative Assistant

REPLY TO:

☐ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

4-20-17

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

1452

Meeting Date

Bill Number (if applicable)

Topic Taximeters

Amendment Barcode (if applicable)

Name Floyd Webb

Job Title _____

Address PO Box 1748

Phone 850 933 1908

Street

Tampa FL 33601

Email -

City

State

Zip

Speaking: For Against Information

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

Representing Florida Taxical 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 Appropriations

BILL: PCS/CS/SB 1590 (516016)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on the Environment and Natural Resources); Environmental Preservation and Conservation Committee; and Senator Latvala and others

SUBJECT: Coastal Management

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Istler</u>	<u>Rogers</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEN</u>	<u>Recommend: Fav/CS</u>
3.	<u>Reagan</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

PCS/CS/SB 1590 revises the beach nourishment and inlet management project funding criteria and requires a minimum distribution of the lesser of 7.6 percent of the funds remaining after the payment of debt service or \$50 million to be appropriated annually from the Land Acquisition Trust Fund for projects that preserve and repair the state's beaches in accordance with the revised project funding criteria.

II. Present Situation:

Beach and Shore Preservation

Fronting the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida, the state has 825 miles of sandy coastline.¹ Beaches are one of Florida's most valuable resources and serve multiple important functions including providing habitat and protection for several species of plants and animals, attracting visitors and new residents to the state, and providing a line of defense against

¹ Florida Department of Environmental Protection (DEP), *Beaches and Coastal Systems: About Us*, <http://www.dep.state.fl.us/beaches/> (last visited Mar. 16, 2017).

major storms.² Specifically, beaches are the most important feature of Florida's brand, accounting for 25.5 percent of the state's attractiveness to visitors.³

Beaches require ongoing maintenance to curtail erosion, which threatens this valuable state resource.⁴ While beaches are naturally prone to erosion due to natural forces, such as wind-driven currents and tides and storms, human-induced erosion is attributable to the construction and maintenance of navigation inlets and the development and placement of infrastructure in close proximity to the shore.⁵

Critically Eroded Beaches Report

The Florida Department of Environmental Protection (DEP) is required to determine which beaches are critically eroded and in need of restoration and nourishment.⁶ According to the DEP, there are 411.2 miles of critically eroded beach, 8.7 miles of critically eroded inlet shoreline, 93.5 miles of non-critically eroded beach, and 3.2 miles of non-critically eroded inlet shoreline statewide.⁷ Erosion is critical if “there is a threat to or loss of one of four specific interests – upland development, recreation, wildlife habitat, or important cultural resources.”⁸

One way to restore eroded beaches is through beach nourishment, which is the replacement of sand that a beach has lost.⁹ In a typical beach nourishment project, sand is collected from an offshore location by a dredge and piped onto the beach.¹⁰ Bulldozers are then used to move the new sand on the beach until the beach matches the project design profile.¹¹ The DEP is authorized to review innovative technologies for beach nourishment and, on a limited basis, authorize alternatives to traditional dredge and fill projects to determine the most cost-effective techniques for beach nourishment.¹²

² *Id.*

³ Office of Economic & Demographic Research (EDR), *Economic Evaluation of Florida's Investment in Beaches: Identifying the State's Brand, Calculating the Return on Investment of Beach Restoration and Assessing the Risk of Disasters*, 1 (Jan. 2015), available at <http://edr.state.fl.us/Content/returnoninvestment/BeachReport.pdf> (last visited Mar. 16, 2017).

⁴ DEP, *Beaches and Coastal Systems: Why Restore Eroded Beaches?*, <http://www.dep.state.fl.us/beaches/programs/becp/restore.htm> (last visited Mar. 16, 2017).

⁵ DEP, *Strategic Beach Management Plan*, 1 (July 2015), available at <http://www.dep.state.fl.us/beaches/publications/pdf/SBMP/SBMP-Introduction.pdf> (last visited Mar. 16, 2017).

⁶ Section 161.101(1), F.S.

⁷ DEP, Division of Water Resource Management, *Critically Eroded Beaches in Florida*, 4, 5 (Aug. 2016), available at <http://www.dep.state.fl.us/beaches/publications/pdf/CriticalErosionReport.pdf> (last visited Mar. 16, 2017). The term “critically eroded shoreline” is defined in Fla. Admin. Code R. 62B-36.002 to mean “a segment of shoreline where natural processes or human activities have caused, or contributed to, erosion and recession of the beach and dune system to such a degree that upland development, recreational interests, wildlife habitat or important cultural resources are threatened or lost. Critically eroded shoreline may also include adjacent segments or gaps between identified critical erosion areas which, although they may be stable or slightly erosional now, their inclusion is necessary for continuity of management of the coastal system or for the design integrity of adjacent beach management projects.”

⁸ DEP, Division of Water Resource Management, *Critically Eroded Beaches in Florida*, 7 (Aug. 2016).

⁹ *See s.* 161.021, F.S.

¹⁰ DEP, *Beaches and Coastal Systems: Why Restore Eroded Beaches?*, <http://www.dep.state.fl.us/beaches/programs/becp/restore.htm> (last visited Mar. 16, 2017).

¹¹ *Id.*

¹² Section 161.082, F.S.

Strategic Beach Management Plan

The DEP is required to develop and maintain a comprehensive long-term management plan for the restoration and maintenance of the state's critically eroded beaches.¹³ The beach management plan is required, in part, to:

- Address long-term solutions to the problem of critically eroded beaches;
- Evaluate each improved, modified, or altered inlet and determine whether the inlet is a significant cause of beach erosion;
- Design criteria for beach restoration and beach nourishment projects;
- Identify causes of shoreline erosion and change, calculate erosion rates, and project long-term erosion for all major beach and dune systems by surveys and profiles;
- Study dune and vegetative conditions; and
- Establish a prioritized list of beach restoration and beach nourishment projects and the funding levels needed for such projects.¹⁴

The State Beach Management Plan (SBMP) is a dynamic management tool for use by state, local, and federal government officials. The SBMP is updated periodically as specific strategies are implemented, new resources and opportunities are identified, and proposed strategies are developed by the DEP and federal or local government sponsors. The DEP prepares the SBMP at the regional level.¹⁵ The regional plans include recommendations of appropriate funding mechanisms for implementing projects in the beach management plan and describe the historical and present beach restoration activities taken to restore and manage Florida's beaches.¹⁶

Long Range Budget Plan

The statewide long range budget plan projects the 10-year planning needs for federal, state, and local governments necessary to implement the SBMP.¹⁷ The budget plan is subdivided by the same regions as the SBMP and provides a statewide view of many individual project efforts. The budget plan is used to encourage cooperation and coordination among local, state, and federal entities and organizations responsible for managing beaches.

Beach Management Funding Assistance Program

Pursuant to declared state public policy, the Legislature is required to fund beach restoration and nourishment projects, including inlet management projects, that cost-effectively provide beach-quality material for adjacent critically eroded beaches.¹⁸ Such projects must be in an area designated as critically eroded shoreline, or benefit an adjacent critically eroded shoreline; have a clearly identifiable beach management benefit consistent with the state's beach management plan; and be designed to reduce potential upland damage or mitigate adverse impacts caused by improved, modified, or altered inlets, coastal armoring, or existing upland development.¹⁹

¹³ Section 161.161, F.S.

¹⁴ *Id.*

¹⁵ See DEP, *Beaches and Coastal Systems: Publications*, <http://www.dep.state.fl.us/beaches/publications/index.htm#SBMP> (last visited Mar. 16, 2017), for each regional plan.

¹⁶ Section 161.161, F.S.

¹⁷ DEP, *Florida Beach Management Program, Long Range Budget Plan for 2017-2027*, 1 (Dec. 1, 2016), available at <http://www.dep.state.fl.us/beaches/programs/becp/docs/LRBP-FY1727.pdf> (last visited Mar. 16, 2017).

¹⁸ Section 161.088, F.S.

¹⁹ *Id.*

The DEP authorizes disbursements made to the DEP from the Land Acquisition Trust Fund (LATF) to carry out the state's responsibilities for a comprehensive, long-range, statewide beach management plan for erosion control; beach preservation, restoration, and nourishment; storm and hurricane protection; and other activities authorized pursuant to s. 28, Article X of the State Constitution.²⁰ The DEP established the Beach Management Funding Assistance Program for the purpose of working in concert with local, state, and federal governmental entities to achieve the protection, preservation, and restoration of Florida's sandy beaches.²¹

Section 161.101, F.S., authorizes the state to pay up to 75 percent of the actual costs for restoring and nourishing critically eroded beaches in recognition that local beach communities derive the primary benefits from the presence of adequate beaches.²² The local government in which the beach is located is responsible for the balance of such costs.²³ However, that section of law also provides that "until the unmet demand for repairing Florida's damaged beaches and dunes is satisfied, it is the further intent of the Legislature to cost share such projects equally between the state and local sponsors."²⁴

In order to receive state funds, projects are required to provide adequate public access, protect natural resources, and protect endangered and threatened species.²⁵ Additionally, the DEP is not authorized to fund projects that provide only recreational benefits. All funded projects are required to have an identifiable beach erosion control or beach preservation benefit directed toward maintaining or enhancing the sand in the system. All of the following activities are ineligible for cost-sharing:

- Recreational structures, such as piers, decks, and boardwalks.
- Park activities and facilities, except for erosion control.
- Aesthetic vegetation.
- Water quality components of stormwater management systems.
- Experimental or demonstration projects, unless favorably peer-reviewed or scientifically documented.
- Hard structures, unless designed for erosion control or to enhance beach nourishment project longevity or bypassing performance.
- Operations and maintenance, with the exception of nourishment.
- Maintenance and repair of over-walks.
- Navigation construction, operation, and maintenance activities, except those elements whose purpose is to place or keep sand on adjacent beaches.²⁶

The DEP is required to consider the following criteria in determining annual funding priorities:

- The severity of erosion conditions, the threat to existing upland development, and recreational or economic benefits;

²⁰ Section 161.091(1), F.S.

²¹ Fla. Admin. Code R. 62B-36.001.

²² Section 161.101(1), F.S.

²³ *Id.*

²⁴ Section 161.101(15), F.S.

²⁵ Section 161.101(12), F.S.

²⁶ Section 161.101(13), F.S.

- The availability of federal matching dollars;
- The extent of the local government sponsor’s financial and administrative commitment to the project, including a long-term financial plan with a designated funding source for initial construction and periodic maintenance;
- Previous state commitment and involvement in the project;
- The anticipated physical performance of the proposed project, including the frequency of periodic planned nourishment;
- The extent to which the proposed project mitigates the adverse impact of improved, modified, or altered inlets on adjacent beaches;
- Innovative, cost-effective, and environmentally sensitive applications to reduce erosion;
- Projects that provide enhanced habitat within or adjacent to designated refuges of nesting sea turtles;
- The extent to which local or regional sponsors of beach erosion control projects agree to coordinate the planning, design, and construction of their projects to take advantage of identifiable cost savings; and
- The degree to which the project addresses the state’s most significant beach erosion problems.²⁷

The DEP established a priority ranking system to implement the statutory criteria for beach and inlet management projects for funding assistance.²⁸ The ranking system is based on points. Under the system a project receives a total point score based on project ranking criteria. The total amount of points available for beach management projects is 115 points and the total for inlet

Statutory Criteria	Number of Component Criteria	Available Points
Beach Management		
Significance	6	20
Local Sponsor Financial and Administrative Commitment	6	10
Previous State Commitment	4	10
Availability of Federal Funds	3	10
Project Performance	2	10
Recreational and Economic Benefits	1	10
Severity of Erosion	1	10
Mitigation of Inlet Effects	1	10
Threat to Upland Structures	1	10
Innovative Technologies	2	5
Regionalization	1	5
Enhance Refuges of Nesting Sea Turtle	1	5
Total	29	115

Statutory Criteria	Number of Component Criteria	Available Points
Inlet Management		
Balancing the Sediment Budget	1	20
Inlet Management Plan	3	15
Local Sponsor Financial and Administrative Commitment	6	10
Previous State Commitment	4	10
Availability of Federal Funding	3	10
Sand Reaching the Inlet	1	10
Cost Effectiveness	1	10
Enhanced Project Performance	1	5
Total	20	90

²⁷ Section 161.101(14), F.S.

²⁸ Fla. Admin. Code R. 62B-36.006.

management projects is 90 points.²⁹ The charts provided above indicate the number of component criteria under each statutory criteria as developed by the DEP.³⁰

In December of 2014, the Office of Program Policy Analysis and Government Accountability (OPPAGA) released a report evaluating the DEP process for selecting and prioritizing beach management and inlet management projects. The review considered the current statutory criteria and related administrative rules and the funding request application process, information requirements, and timeline. Further, OPPAGA reviewed how the DEP uses each ranking criteria for establishing the annual priority order for beach management and restoration projects.

The report made several findings, including:

- Certain criteria accounts for the majority of the points awarded;
- Certain criteria only applies to a limited number of projects;
- The criteria do not adequately take into account the economic impact of beach projects;
- The criteria do not adequately account for a project's cost effectiveness or performance;
- The criteria do not take into account the impacts of recent storms or the current conditions of the shoreline;
- Stakeholders found the application requirements for funding to be too complicated and time consuming; and
- Stakeholders perceived a bias for projects that received federal funding.³¹

The American Society of Civil Engineers rated Florida's coastal areas infrastructure as a D+, citing to the fact that over the last 10 years, the average difference between requested and state appropriated funds exceeded \$40 million per year.³² The Office of Economic and Demographic Research determined that the state's investment in beach management and restoration generated a positive return on investment of 5.4.³³ A return greater than one means that the tax revenues generated by tourists to the state more than cover the state's expenditures on beaches.

Land Acquisition Trust Fund

Documentary stamp tax revenues are collected under ch. 201, F.S., which requires an excise tax to be levied on two classes of documents: deeds and other documents related to real property, which are taxed at the rate of \$0.70 per \$100; and certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements, which are taxed at \$0.35 per \$100.³⁴

²⁹ See DEP, *Beach Management Funding Assistance Program, Local Government Funding Requests: Ranking Criteria for Beach and Inlet Management Projects*, (Updated 2013), available at <http://www.dep.state.fl.us/BEACHES/programs/becp/docs/ranking-methodology-62B36.pdf> (last visited Mar. 17, 2017).

³⁰ Office of Program Policy Analysis & Government Accountability (OPPAGA), *The Beach Management Funding Assistance Program Was Recently Improved, but Some Stakeholder Concerns Persist*, 4 (Dec. 2014), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1412rpt.pdf> (last visited Mar. 17, 2017).

³¹ *Id.* at 6-12.

³² American Society of Civil Engineers, *2016 Report Card for Florida's Infrastructure*, http://www.infrastructurereportcard.org/wp-content/uploads/2017/01/2016_RC_Final_screen.pdf (last visited Mar. 16, 2017).

³³ EDR, *Economic Evaluation of Florida's Investment in Beaches: Identifying the State's Brand, Calculating the Return on Investment of Beach Restoration and Assessing the Risk of Disasters*, 1 (Jan. 2015).

³⁴ See ss. 201.02 and 201.08, F.S.

In 2014, Florida voters approved Amendment One, a constitutional amendment to provide a dedicated funding source for water and land conservation and restoration. The amendment required that starting on July 1, 2015, and for 20 years thereafter, 33 percent of net revenues derived from the documentary stamp taxes be deposited into the LATF. Article X, s. 28 of the State Constitution requires that funds in the LATF be expended only for the following purposes:

As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.³⁵

To implement Art. X, s. 28 of the State Constitution, the Legislature in the 2015 Special Session A passed ch. 2015-229, Laws of Florida.³⁶ This act, in part, amended the following sections of law:

- Section 201.15, F.S., to conform to the constitutional requirement that the LATF receive at least 33 percent of net revenues derived from documentary stamp taxes; and
- Section 375.041, F.S., to designate the LATF within the Department of Environmental Protection as the trust fund to serve as the constitutionally mandated depository for a percentage of the documentary stamp tax revenues.³⁷

In 2016, the Legislature passed ch. 2016-201, Laws of Florida, referred to as “Legacy Florida.”³⁸ Legacy Florida amended s. 375.041, F.S., to require specified minimum distributions from the LATF. Under s. 375.041, F.S., funds deposited into the LATF must be distributed in the following order and amounts:

- First, obligations relating to debt service, specifically:
 - First to payments relating to debt service on Florida Forever bonds and Everglades restoration bonds; and
 - Then to payments relating to debt service on bonds issued before February 1, 2009, by the South Florida Water Management District and the St. Johns River Water Management District;
- Then, before funds are authorized to be appropriated for other uses:

³⁵ FLA. CONST. art. X, s. 28.

³⁶ Chapter 2015-229, Laws of Fla.

³⁷ Chapter 2015-229, s. 9, s. 50, Laws of Fla.

³⁸ Chapter 2016-201, Laws of Fla.

- A minimum of the lesser of 25 percent of the funds remaining after the payment of debt service or \$200 million annually for Everglades projects that implement the Comprehensive Everglades Restoration Plan (CERP), the Long-Term Plan,³⁹ or the Northern Everglades and Estuaries Protection Program (NEEPP), with priority given to Everglades projects that reduce harmful discharges of water from Lake Okeechobee to the St. Lucie or Caloosahatchee estuaries in a timely manner. The following specified distributions are required from these funds:
 - \$32 million through the 2023-2024 fiscal year for the Long-Term Plan;
 - After deducting the \$32 million, the minimum of the lesser of 76.5 percent of the remainder or \$100 million through the 2025-2026 Fiscal Year for the CERP; and
 - Any remaining funds for Everglades projects under the CERP, the Long-Term Plan, or the NEEPP.
- A minimum of the lesser of 7.6 percent of the funds remaining after the payment of debt service or \$50 million annually for springs restoration, protection, and management projects; and
- Five million annually to the St. Johns River Water Management District for projects dedicated to the restoration of Lake Apopka.⁴⁰
- Then any remaining moneys are authorized to be appropriated for the purposes set forth in Art. X, s. 28 of the State Constitution.⁴¹

The General Revenue Estimating Conference in December of 2016 estimated that for the 2017-2018 fiscal year a total of \$2.48 billion would be collected in documentary stamp taxes. Thirty-three percent of the net revenues collected or approximately \$814.1 million must be deposited into the LATF as required under Art. X, s. 28 of the State Constitution.⁴²

III. Effect of Proposed Changes:

Beach Management Project Funding

Section 1 amends s. 161.101(14), F.S., to revise the beach management project funding criteria and require the Department of Environmental Protection (DEP) to adopt by rule a scoring system to determine annual funding priorities. The bill requires the scoring system to be consistent with the following criteria equally weighted within the following specified tiers:

Tier 1 (20 percent of the total project score)

Tier 1 consists of the tourism-related return on investment and economic impact of the project. The return on investment of the project equals the ratio of the tourism-related tax revenues for the most recent year to the amount of state funding requested for the proposed project. The economic impact of the project equals the ratio of the tourism-related tax revenues to all county tax revenues for the most recent year.

³⁹ Note that the “Long-Term Plan” includes the Restoration Strategies Regional Water Quality Plan.

⁴⁰ Section 375.041, F.S.

⁴¹ *Id.*

⁴² EDR, Revenue Estimating Conference, *Documentary Stamp Tax, Executive Summary* (Dec. 12, 2016) available at <http://www.edr.state.fl.us/Content/conferences/docstamp/docstampexecsummary.pdf> (last visited Mar. 15, 2017).

The DEP is required to calculate such ratios using state sales tax and tourism development tax data of the county having jurisdiction over the project area. If multiple counties have jurisdiction over the project area, the DEP is required to assess each county individually using these ratios and then calculate the average of the ratios of each county to determine the final overall assessment for a multicounty project.

Tier 2 (45 percent of the total project score)

Tier 2 consists of the following criteria:

- The availability of federal matching dollars, considering federal authorization, the federal cost-share percentage, and the status of the funding award;
- The storm damage reduction benefits of the project based on the following considerations:
 - The current conditions of the project area, including any recent storm damage impacts, as a percentage of the volume of sand lost since the most recent beach nourishment event or most recent beach surveys. If the project area has not been previously restored, the DEP must use the historical background erosion rate;
 - The overall potential threat to existing upland development, including public and private structures and infrastructure, based on the percentage of vulnerable shoreline within the project boundaries;
 - The value of upland property benefiting from the protection provided by the project and its subsequent maintenance. A property must be within one-quarter mile of the project boundaries to be considered under this criterion; and
- The cost-effectiveness of the project based on the yearly cost per volume per mile of proposed beach fill placement. The DEP is required to consider the following criteria when assessing cost-effectiveness:
 - The existence of projects with proposed structural or design components to extend the beach nourishment interval;
 - Existing beach nourishment projects that reduce upland storm damage costs by incorporating new or enhanced dune structures or new or existing dune restoration and revegetation projects;
 - Proposed innovative technologies designed to reduce project costs; and
 - Regional sediment management strategies and coordination to conserve sand source resources and reduce project costs.

Tier 3 (20 percent of the total project score)

Tier 3 consists of the following criteria:

- Previous state commitment and involvement in the project, considering previously funded phases, the total amount of previous state funding, and previous partial appropriations for the proposed project;
- The recreational benefits of the project based on:
 - The accessible beach area added by the project; and
 - The percentage of linear footage within the project boundaries that is zoned:
 - As recreational or open space;
 - For commercial use; or
 - Otherwise allows for public lodging establishments;
- The extent to which the project mitigates the adverse impact of improved, modified, or altered inlets on adjacent beaches; and

- The degree to which the project addresses the state’s most significant beach erosion problems based on the ratio of the linear footage of the project shoreline to the cubic yards of sand placed per mile per year.

Tier 4 (15 percent of the total project score)

Tier 4 consists of:

- Increased prioritization of projects that have been on the DEP’s ranked project list for successive years and that have not previously secured state funding for project implementation;
- Environmental habitat enhancement, recognizing state or federal critical habitat areas for threatened or endangered species that may be subject to extensive shoreline armoring or recognizing areas where extensive shoreline armoring threatens the availability or quality of habitat for such species. Turtle-friendly designs, dune and vegetation projects for areas with redesigned or reduced fill templates, proposed incorporation of best management practices and adaptive management strategies to protect resources, and innovative technologies designed to benefit critical habitat preservation; and
- The overall readiness of the project to proceed in a timely manner considering the project’s readiness for the construction phase of development, the status of required permits, the status of any needed easement acquisition, the availability of local funding sources, and the establishment of an erosion control line. If the DEP identifies specific reasonable and documented concerns that the project will not proceed in a timely manner, the DEP may choose not to include the project in the annual funding priorities submitted to the Legislature.

Section 2 amends s. 161.101(20), F.S., to revise provisions relating project lists, reporting requirements, and surplus funding in the following manner:

Project lists, notification, and summary reports

Section 2 requires the DEP to update their active project list at least quarterly, rather than by fiscal year. Section 2 also revises the definition of the term “significant change” to include a project-specific change or cumulative changes that exceed the project’s original allocation by \$500,000 or more. The revised definition requires the DEP to notify the Governor and the Legislature when such change exceeds the project’s original allocation by \$500,000 or more in addition to a change exceeding 25 percent of the original allocation.

The DEP is required to prepare a summary of project activities, their funding status, and changes to annual project lists for the current and preceding fiscal year, which must be included in the DEP’s submission of its annual legislative budget request.

Funding for specific projects on annual project lists approved by the Legislature is required to remain available for 18 months. The bill requires the DEP, rather than the local project sponsor, to notify the Executive Office of the Governor and the Legislature when appropriated project dollars are released to a project sponsor.

Surplus funding

Section 2 requires the DEP to provide supporting justification in addition to notification to the Executive Office of the Governor and the Legislature regarding its intent regarding the use of surplus dollars for projects that have a significant change. The bill authorizes such surplus funds to be used for beach restoration and nourishment projects in addition to being available for inlet management projects, reversion as part of the next appropriations process, or used for other specified priority projects on active project lists.

The DEP is not required to provide such notice and justification for the use of surplus funds for projects that do not have a significant change. However, the DEP must post the uses of such surplus funds on the project-listing page on its website.

Inlet Management Projects

Section 3 amends s. 161.143, F.S., to revise the funding priorities for inlet management projects.

Section 3 requires that projects considered for funding under the inlet management program are required to be considered separate and apart from projects reviewed and prioritized under the tiered structure for beach nourishment projects. The bill requires that the inlet management projects funded by the DEP constitute the intended scope of inlet management and of the state's public policy relating to improved navigation inlets found in s. 161.142, F.S. The bill expands the types of inlet management projects that the DEP may consider for priority funding to include improvements of infrastructure to facilitate sand bypassing.

Section 3 requires the DEP to give equal consideration to the listed criteria and revises such ranking criteria by:

- Requiring the DEP to consider the cost-effectiveness of sand made available by a proposed inlet management project or activity relative to other sand source opportunities that could be used to address inlet-caused erosion;
- Removing the term "existing" from the provision requiring the DEP to consider the extent to which bypassing activities at an inlet would benefit from modest, cost-effective improvements when considering the volumetric increases from the proposed project;
- Removing the requirement that the DEP consider the interest and commitment of local governments as demonstrated by their willingness to coordinate the planning, design, construction, and maintenance of an inlet management project and their financial plan for funding the local cost share for initial construction, ongoing sand bypassing, channel dredging, and maintenance;
- Revising the requirements relating to inlet management plans or local-government-sponsored inlet studies by requiring the DEP to consider the existence of a proposed or recently updated inlet management plan or a local-government-sponsored inlet study addressing the mitigation of an inlet's erosive effects on adjacent beaches; and
- Clarifying that the DEP is to consider the criteria used for ranking beach nourishment projects for inlet management projects if the criteria is distinct from and not duplicative of the inlet management project ranking criteria.

Section 3 authorizes the DEP to pay from legislative appropriations up to 75 percent of the construction costs of an initial major inlet management project component for the purpose of mitigating the erosive effects of the inlet to the shoreline and balancing sediment budget. The remaining balance is required to be paid from other funding sources, such as local sponsors. All other project costs not associated with an initial major project component are required to be shared equally by state and local sponsors.

Section 3 removes the authorization for the DEP to employ university-based or other contractual sources for studies that are consistent with the public policy of the state relating to improved navigation inlets.

Section 3 revises the requirements for the inlet management project list, which the DEP is required to submit to the Legislature by:

- Removing the requirement that:
 - The list include studies, projects, or other activities that address the management of at least 10 separate ranked inlets;
 - At least 50 percent of the funds appropriated for feasibility and design category in the DEP's fixed capital outlay funding request be available for projects on the current year's inlet management project list which involve the study for, or design or development of, an inlet management project;
 - All statewide beach management funds that remain unencumbered or are allocated to non-project-specific activities for projects on legislatively approved inlet management project lists be made available;
 - The Legislature designate one of the three highest projects on the inlet management project list in any year as the Inlet of the Year and requirements of the DEP relating thereto; and
- Requiring that the DEP:
 - Designate for projects on the current year's list, in priority order, an amount that is at least equal to the greater of:
 - Ten percent of the total amount that the Legislature appropriates in the fiscal year for statewide beach management; or
 - The percentage of inlet management funding requests from local sponsors as a proportion of the total amount of statewide beach management dollars requested in a given year;
 - Include inlet monitoring activities ranked on the inlet management project list as one aggregated subcategory on the overall inlet management project list; and
 - Update and maintain an annual report on its website concerning the extent to which each inlet project has succeeded in balancing the sediment budget of the inlet and adjacent beaches and in mitigating the inlet's erosive effects on adjacent beaches. The report must provide an estimate of the quantity of sediment bypasses, transferred, or otherwise placed on adjacent eroding beaches, or in such beaches' nearshore area, for the purpose of offsetting the erosive effects of inlets on the beaches of this state.

Strategic Beach Management Plan

Section 4 amends s. 161.161, F.S., to require the DEP in developing and maintaining the Strategic Beach Management Plan (SBMP) to:

- Include recommendations for improvement of infrastructure to facilitate sand bypassing to mitigate the erosive impact of an inlet that causes beach erosion;
- Consider the establishment of regional sediment management alternatives for one or more individual beach and inlet sand bypassing projects as an alternative to beach restoration when appropriate and cost-effective, and recommend the location of such regional sediment management alternatives and the source of beach-compatible sand;
- In addition to identifying shoreline erosion and change, determine erosion rates, and maintain an updated list of critically eroded sandy beaches based on data, analyses, and investigations of shoreline conditions;
- In addition to studying dune and vegetation conditions, identify existing beach projects without dune features or with dunes without adequate elevations, and encourage dune restoration and revegetation to be incorporated as part of storm damage recovery projects or future dune maintenance events;
- Document procedures and policies for preparing post-storm damage assessments and corresponding recovery plans, including repair cost estimates; and
- Identify and assess appropriate management measures for all of the state's critically eroded sandy beaches.

Section 4 removes the requirement that the DEP, in developing and maintaining the SBMP:

- Include cost estimates necessary to take inlet corrective measures and recommendations regarding cost sharing among the beneficiaries of such inlet;
- Evaluate the establishment of feeder beaches as an alternative to direct beach restoration and recommend the location of such feeder beaches;
- Project long-term erosion for all major beach and dune systems by surveys and profiles;
- Identify shoreline development and degree of density;
- In identifying short-and long-term economic costs and benefits of beaches, include recreational value to user groups, tax base, revenues generated, and beach acquisition and maintenance costs;
- Identify alternative management responses to prevent inappropriate development and redevelopment on migrating beaches;
- Consider abandonment as an alternative management response;
- Establish criteria, including costs and specific implementation actions, for alternative management techniques; and
- Submit regional plans on a set schedule and in accordance with certain requirements.

Section 4 authorizes the DEP to hold a public meeting in the region for which the plan is prepared, through a publicly noticed webinar. The bill requires the comprehensive long-term management plan to include, at a minimum, a strategic beach management plan, a critically eroded beaches report, and a statewide long range budget plan.

Long range budget plan

The DEP is required to provide a long range budget plan that includes at least five years of planned beach nourishment and inlet management project funding needs as identified, and subsequently refined, by local government sponsors. The plan is required to consist of a three-year work plan and a long-range plan that identifies projects for inclusion in the fourth and fifth ensuing years.

The long range budget plan must include a three-year work plan for beach restoration, beach nourishment and inlet management projects. The three-year work plan is required to list planned projects for each of the three fiscal years addressed in the work plan. The three-year work plan must:

- Identify beach restoration, beach nourishment and inlet management projects viable for implementation during the next three ensuing fiscal years, as determined by available cost-sharing, local sponsor support, regulatory considerations, and the ability of the project to proceed as scheduled;
- For year fiscal year, identify proposed projects and their current development status, listing them in priority order based on the applicable criteria; and
- Be accompanied by a three-year financial forecast for the availability of funding for the projects based on funds dedicated through the Land Acquisition Trust Fund.

Section 4 authorizes specific funding requests and criteria ranking to be modified as warranted in each successive fiscal year, provided that such modifications are documented and submitted to the Legislature with each three-year work plan. Year One projects consist of projects identified for funding consideration in the ensuing fiscal year.

Projects for consideration in the Fourth and Fifth ensuing years may be presented by region and do not need to be presented by priority order. However, the DEP is required to identify issues that may prevent successful completion of such projects and recommend solutions that would allow the projects to progress into the three-year work plan.

Section 4 also requires the DEP to present the three-year work plan to the Legislature each year.

Land Acquisition Trust Fund

Section 5 amends s. 375.041, F.S., to require an annual appropriation from the Land Acquisition Trust Fund in the amount of a minimum of the lesser of 7.6 percent of the funds remaining after the payment of debt service or \$50 million. Such funds are required to be appropriated annually for projects that preserve and repair the state's beaches.

Section 5 also requires that the amount of the distribution to be calculated to be reduced by an amount equal to the debt service paid on bonds issues for projects that preserve or repair the state's beaches issued after July 1, 2016.

Except for section 1 and section 4 of the bill, which take effect July 1, 2018, the bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will have a positive, indeterminate fiscal impact to local governments that receive funding for beach nourishment. The bill has a negative, recurring appropriation to the Land Acquisition Trust Fund (LATF), which requires the minimum of the lesser of 7.6 percent of the remainder of funds after the payment of debt service within the LATF or \$50 million. However, some of the costs may be offset depending on the return on investment the state receives related to beach restoration and nourishment projects.

VI. Technical Deficiencies:

If the intent of this legislation is to establish a continuing appropriation of \$50 million annually, without further legislative action in subsequent fiscal years, the language “shall be appropriated annually” should be clarified to read, “is appropriated annually.”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 161.101, 161.143, 161.161, and 375.041.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on the Environment and Natural Resources on April 13, 2017:

The committee substitute clarifies that beach restoration projects are included in developing and maintaining the Strategic Beach Management Plan.

CS by Environmental Preservation and Conservation on March 22, 2017:

CS/SB 1590 pushes back the effective date for the amendment to s. 161.101(14), F.S., relating to the scoring system for beach management project funding and s. 161.161, F.S., relating to the procedure for the approval of projects for beach and inlet management.

- B. **Amendments:**

None.



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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on the Environment and Natural
Resources)

A bill to be entitled

An act relating to coastal management; amending s.
161.101, F.S.; revising the criteria to be considered
by the Department of Environmental Protection in
determining and assigning annual funding priorities
for beach management and erosion control projects;
specifying tiers for such criteria; requiring tiers to
be given certain weight; requiring the department to
update active project lists on its website; redefining
the term "significant change"; revising the
department's reporting requirements; specifying
allowable uses for certain surplus funds; revising the
requirements for a specified summary; requiring that
funding for certain projects remain available for a
specified period; amending s. 161.143, F.S.;
specifying the scope of certain projects; revising the
list of projects that are included as inlet management
projects; requiring that certain projects be
considered separate and apart from other specified
projects; revising the ranking criteria to be used by
the department to establish certain funding priorities
for certain inlet-caused beach erosion projects;
revising provisions authorizing the department to
spend certain appropriated funds for the management of
inlets; deleting a provision authorizing the
department to spend certain appropriated funds for



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specified inlet studies; revising the required
elements of the department's report of prioritized
inlet management projects; revising the funds that the
department must make available to certain inlet
management projects; requiring the department to
include specified activities on the inlet management
project list; deleting provisions requiring the
department to make available funding for specified
projects; deleting a requirement that the Legislature
designate a project as an Inlet of the Year; requiring
the department to update and maintain a report
regarding the progress of certain inlet management
projects; revising the requirements for the report;
deleting certain temporary provisions relating to
specified appropriations; amending s. 161.161, F.S.;
revising requirements for the comprehensive long-term
management plan; requiring the plan to include a
strategic beach management plan, a critically eroded
beaches report, and a statewide long-range budget
plan; providing for the development and maintenance of
such plans; deleting a requirement that the department
submit a certain beach management plan on a certain
date each year; requiring the department to hold a
public meeting before finalization of the strategic
beach management plan; requiring the department to
submit a 3-year work plan and a related forecast for
the availability of funding to the Legislature;
amending s. 375.041, F.S.; requiring certain funds
from the Land Acquisition Trust Fund to be used for



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56 projects that preserve and repair state beaches;
57 providing effective dates.

58
59 Be It Enacted by the Legislature of the State of Florida:

60
61 Section 1. Effective July 1, 2018, subsection (14) of
62 section 161.101, Florida Statutes, is amended to read:

63 161.101 State and local participation in authorized
64 projects and studies relating to beach management and erosion
65 control.—

66 (14) The intent of the Legislature in preserving and
67 protecting Florida's sandy beaches pursuant to this act is to
68 direct beach erosion control appropriations to the state's most
69 severely eroded beaches, and to prevent further adverse impact
70 caused by improved, modified, or altered inlets, coastal
71 armoring, or existing upland development. In establishing annual
72 project funding priorities, the department shall seek formal
73 input from local coastal governments, beach and general
74 government interest groups, and university experts. The
75 department shall adopt by rule a scoring system to determine
76 annual project funding priorities. The scoring system must
77 consist of the following criteria equally weighted within the
78 following specified tiers ~~criteria to be considered by the~~
79 department in determining annual funding priorities shall
80 include:

81 (a) Tier 1 must account for 20 percent of the total score
82 and consist of the tourism-related return on investment and the
83 severity of erosion conditions, the threat to existing upland
84 development, and recreational and/or economic impact of the



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85 project. The return on investment of the project is the ratio of
86 the tourism-related tax revenues for the most recent year to the
87 amount of state funding requested for the proposed project. The
88 economic impact of the project is the ratio of the tourism-
89 related tax revenues for the most recent year to all county tax
90 revenues for the most recent year. The department must calculate
91 these ratios using state sales tax and tourism development tax
92 data of the county having jurisdiction over the project area. If
93 multiple counties have jurisdiction over the project area, the
94 department must assess each county individually using these
95 ratios. The department shall calculate the mean average of these
96 ratios to determine the final overall assessment for the
97 multicounty project benefits.

98 (b) Tier 2 must account for 45 percent of the total score
99 and consist of the following criteria:

100 1. The availability of federal matching dollars,
101 considering federal authorization, the federal cost-share
102 percentage, and the status of the funding award;-

103 2. The storm damage reduction benefits of the project based
104 on the following considerations:

105 a. The current conditions of the project area, including
106 any recent storm damage impact, as a percentage of volume of
107 sand lost since the most recent beach nourishment event or most
108 recent beach surveys. If the project area has not been
109 previously restored, the department must use the historical
110 background erosion rate;

111 b. The overall potential threat to existing upland
112 development, including public and private structures and
113 infrastructure, based on the percentage of vulnerable shoreline



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114 within the project boundaries; and
115 c. The value of upland property benefiting from the
116 protection provided by the project and its subsequent
117 maintenance. A property must be within one-quarter mile of the
118 project boundaries to be considered under the criterion
119 specified in this subparagraph; and
120 3. The cost-effectiveness of the project based on the
121 yearly cost per volume per mile of proposed beach fill
122 placement. The department shall also consider the following when
123 assessing cost-effectiveness pursuant to this subparagraph:
124 a. The existence of projects with proposed structural or
125 design components to extend the beach nourishment interval;
126 b. Existing beach nourishment projects that reduce upland
127 storm damage costs by incorporating new or enhanced dune
128 structures or new or existing dune restoration and revegetation
129 projects;
130 c. Proposed innovative technologies designed to reduce
131 project costs; and
132 d. Regional sediment management strategies and coordination
133 to conserve sand source resources and reduce project costs.
134 (c) Tier 3 must account for 20 percent of the total score
135 and consist of the following criteria: The extent of local
136 government sponsor financial and administrative commitment to
137 the project, including a long-term financial plan with a
138 designated funding source or sources for initial construction
139 and periodic maintenance.
140 1.(d) Previous state commitment and involvement in the
141 project, considering previously funded phases, the total amount
142 of previous state funding, and previous partial appropriations



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143 for the proposed project;
144 2. The recreational benefits of the project based on:
145 a. The accessible beach area added by the project; and
146 b. The percentage of linear footage within the project
147 boundaries that is zoned:
148 (I) As recreational or open space;
149 (II) For commercial use; or
150 (III) To otherwise allow for public lodging
151 establishments;-
152 (e) The anticipated physical performance of the proposed
153 project, including the frequency of periodic planned
154 nourishment.
155 3.(f) The extent to which the proposed project mitigates
156 the adverse impact of improved, modified, or altered inlets on
157 adjacent beaches; and-
158 (g) Innovative, cost-effective, and environmentally
159 sensitive applications to reduce erosion.
160 (h) Projects that provide enhanced habitat within or
161 adjacent to designated refuges of nesting sea turtles.
162 (i) The extent to which local or regional sponsors of beach
163 erosion control projects agree to coordinate the planning,
164 design, and construction of their projects to take advantage of
165 identifiable cost savings.
166 4.(j) The degree to which the project addresses the state's
167 most significant beach erosion problems based on the ratio of
168 the linear footage of the project shoreline to the cubic yards
169 of sand placed per mile per year.
170 (d) Tier 4 must account for 15 percent of the total score
171 and consist of the following criteria:



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172 1. Increased prioritization of projects that have been on
173 the department's ranked project list for successive years and
174 that have not previously secured state funding for project
175 implementation;

176 2. Environmental habitat enhancement, recognizing state or
177 federal critical habitat areas for threatened or endangered
178 species which may be subject to extensive shoreline armoring or
179 recognizing areas where extensive shoreline armoring threatens
180 the availability or quality of habitat for such species. Turtle-
181 friendly designs, dune and vegetation projects for areas with
182 redesigned or reduced fill templates, proposed incorporation of
183 best management practices and adaptive management strategies to
184 protect resources, and innovative technologies designed to
185 benefit critical habitat preservation may also be considered;
186 and

187 3. The overall readiness of the project to proceed in a
188 timely manner considering the project's readiness for the
189 construction phase of development, the status of required
190 permits, the status of any needed easement acquisition, the
191 availability of local funding sources, and the establishment of
192 an erosion control line. If the department identifies specific
193 reasonable and documented concerns that the project will not
194 proceed in a timely manner, the department may choose not to
195 include the project in the annual funding priorities submitted
196 to the Legislature.

197
198 If ~~in the event that~~ more than one project qualifies equally
199 under the provisions of this subsection, the department shall
200 assign funding priority to those projects shown to be most ~~that~~



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201 ~~are~~ ready to proceed.

202 Section 2. Subsection (20) of section 161.101, Florida
203 Statutes, is amended to read:

204 161.101 State and local participation in authorized
205 projects and studies relating to beach management and erosion
206 control.-

207 (20) The department shall maintain active project lists,
208 updated at least quarterly, listings on its website by fiscal
209 year in order to provide transparency regarding those projects
210 receiving funding and the funding amounts, and to facilitate
211 legislative reporting and oversight. In consideration of this
212 intent:

213 (a) The department shall notify the Executive Office of the
214 Governor and the Legislature regarding any significant changes
215 in the funding levels of a given project as initially requested
216 in the department's budget submission and subsequently included
217 in approved annual funding allocations. The term "significant
218 change" means a project-specific change or cumulative changes
219 that exceed the project's original allocation by \$500,000 or
220 that exceed ~~those changes exceeding~~ 25 percent of the a
221 project's original allocation.

222 1. Except as provided in subparagraph 2., if there is
223 surplus funding, the department must provide a notification and
224 supporting justification ~~shall be provided~~ to the Executive
225 Office of the Governor and the Legislature to indicate whether
226 surplus ~~additional~~ dollars are intended to be used for inlet
227 management projects pursuant to s. 161.143 or for beach
228 restoration and beach nourishment projects, offered for
229 reversion as part of the next appropriations process, or used



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230 for other specified priority projects on active project lists.

231 2. For surplus funds for projects that do not have a
232 significant change, the department may use such funds for the
233 same purposes identified in subparagraph 1. The department shall
234 post the uses of such funds on the project listing web page of
235 its website. No other notice or supporting justification is
236 required before the use of surplus funds for a project that does
237 not have a significant change.

238 (b) The department shall prepare a summary of specific
239 project activities for the current fiscal year, their funding
240 status, and changes to annual project lists for the current and
241 preceding fiscal year. shall be prepared by The department shall
242 include the summary and included with the department's
243 submission of its annual legislative budget request.

244 (c) Funding for specific projects on annual project lists
245 approved by the Legislature must remain available for such
246 projects for 18 months. A local project sponsor may at any time
247 release, in whole or in part, appropriated project dollars by
248 formal notification to the department. The department, which
249 shall notify the Executive Office of the Governor and the
250 Legislature of such release and. Notification must indicate in
251 the notification how the project dollars are recommended
252 intended to be used after such release.

253 Section 3. Subsections (2) through (5) of section 161.143,
254 Florida Statutes, are amended to read:

255 161.143 Inlet management; planning, prioritizing, funding,
256 approving, and implementing projects.-

257 (2) The department shall establish annual funding
258 priorities for studies, activities, or other projects concerning



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259 inlet management. Such inlet management projects constitute the
260 intended scope of this section and s. 161.142 and consist of
261 ~~include, but are not limited to,~~ inlet sand bypassing,
262 improvement of infrastructure to facilitate sand bypassing,
263 modifications to channel dredging, jetty redesign, jetty repair,
264 disposal of spoil material, and the development, revision,
265 adoption, or implementation of an inlet management plan.
266 Projects considered for funding pursuant to this section shall
267 be considered separate and apart from projects reviewed and
268 prioritized in s. 161.101(14). The funding priorities
269 established by the department under this section must be
270 consistent with the requirements and legislative declaration in
271 ss. 161.101(14), 161.142, and 161.161(1)(b). In establishing
272 funding priorities under this subsection and before transmitting
273 the annual inlet project list to the Legislature under
274 subsection (4) (5), the department shall seek formal input from
275 local coastal governments, beach and general government
276 associations and other coastal interest groups, and university
277 experts concerning annual funding priorities for inlet
278 management projects. In order to maximize the benefits of
279 efforts to address the inlet-caused beach erosion problems of
280 this state, the ranking criteria used by the department to
281 establish funding priorities for studies, activities, or other
282 projects concerning inlet management must include equal
283 consideration of:

284 (a) An estimate of the annual quantity of beach-quality
285 sand reaching the updrift boundary of the improved jetty or
286 inlet channel.

287 (b) The severity of the erosion to the adjacent beaches



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288 caused by the inlet ~~and the extent to which the proposed project~~
289 ~~mitigates the erosive effects of the inlet.~~

290 (c) The overall significance and anticipated success of the
291 proposed project in mitigating the erosive effects of the inlet,
292 balancing the sediment budget of the inlet and adjacent beaches,
293 and addressing the sand deficit along the inlet-affected
294 shorelines.

295 (d) The extent to which ~~existing~~ bypassing activities at an
296 inlet would benefit from modest, cost-effective improvements
297 when considering the volumetric increases from the proposed
298 project, the availability of beach-quality sand currently not
299 being bypassed to adjacent eroding beaches, and the ease with
300 which such beach-quality sand may be obtained.

301 (e) The cost-effectiveness of sand made available by a
302 proposed inlet management project or activity relative to other
303 sand source opportunities that would be used to address inlet-
304 caused beach erosion ~~The interest and commitment of local~~
305 ~~governments as demonstrated by their willingness to coordinate~~
306 ~~the planning, design, construction, and maintenance of an inlet~~
307 ~~management project and their financial plan for funding the~~
308 ~~local cost share for initial construction, ongoing sand~~
309 ~~bypassing, channel dredging, and maintenance.~~

310 (f) The existence of a proposed or recently updated ~~The~~
311 ~~previous completion or approval of a state-sponsored inlet~~
312 ~~management plan or a local-government-sponsored inlet study~~
313 addressing concerning the inlet addressed by the proposed
314 project, the ease of updating and revising any such plan or
315 study, and the adequacy and specificity of the plan's or study's
316 recommendations concerning the mitigation of an inlet's erosive



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317 effects on adjacent beaches.

318 (g) The degree to which the proposed project will enhance
319 the performance and longevity of proximate beach nourishment
320 projects, thereby reducing the frequency of such periodic
321 nourishment projects.

322 (h) The project-ranking criteria in s. 161.101(14) to the
323 extent such criteria are applicable to inlet management studies,
324 projects, and activities and are distinct from, and not
325 duplicative of, the criteria listed in paragraphs (a)-(g).

326 (3) The department may pay from legislative appropriations
327 up to 75 percent of the construction costs of an initial major
328 inlet management project component for the purpose of mitigating
329 the erosive effects of the inlet to the shoreline and balancing
330 the sediment budget. The remaining balance of such construction
331 costs must be paid from other funding sources, such as local
332 sponsors. All project costs not associated with an initial major
333 inlet management project component must be shared equally by
334 state and local sponsors in accordance with, pursuant to s.
335 161.101 and notwithstanding s. 161.101(15), pay from legislative
336 appropriations provided for these purposes 75 percent of the
337 total costs, or, if applicable, the nonfederal costs, of a
338 study, activity, or other project concerning the management of
339 an inlet. The balance must be paid by the local governments or
340 special districts having jurisdiction over the property where
341 the inlet is located.

342 (4) ~~Using the legislative appropriation to the statewide~~
343 ~~beach-management-support category of the department's fixed~~
344 ~~capital outlay funding request, the department may employ~~
345 ~~university-based or other contractual sources and pay 100~~



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346 ~~percent of the costs of studies that are consistent with the~~
347 ~~legislative declaration in s. 161.142 and that:~~

348 ~~(a) Determine, calculate, refine, and achieve general~~
349 ~~consensus regarding net annual sediment transport volumes to be~~
350 ~~used for the purpose of planning and prioritizing inlet~~
351 ~~management projects; and~~

352 ~~(b) Appropriate, assign, and apportion responsibilities~~
353 ~~between inlet beneficiaries for the erosion caused by a~~
354 ~~particular inlet on adjacent beaches.~~

355 ~~(4)(5) The department shall annually provide an inlet~~
356 ~~management project list, in priority order, to the Legislature~~
357 ~~as part of the department's budget request. The list must~~
358 ~~include studies, projects, or other activities that address the~~
359 ~~management of at least 10 separate inlets and that are ranked~~
360 ~~according to the criteria established under subsection (2).~~

361 ~~(a) The department shall designate for make available at~~
362 ~~least 10 percent of the total amount that the Legislature~~
363 ~~appropriates in each fiscal year for statewide beach management~~
364 ~~for the three highest-ranked projects on the current year's~~
365 ~~inlet management project list, in priority order, an amount that~~
366 ~~is at least equal to the greater of:~~

367 ~~1. Ten percent of the total amount that the Legislature~~
368 ~~appropriates in the fiscal year for statewide beach management;~~
369 ~~or~~

370 ~~2. The percentage of inlet management funding requests from~~
371 ~~local sponsors as a proportion of the total amount of statewide~~
372 ~~beach management dollars requested in a given year.~~

373 ~~(b) The department shall include inlet monitoring~~
374 ~~activities ranked on the inlet management project list as one~~



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375 ~~aggregated subcategory on the overall inlet management project~~
376 ~~list make available at least 50 percent of the funds~~
377 ~~appropriated for the feasibility and design category in the~~
378 ~~department's fixed capital outlay funding request for projects~~
379 ~~on the current year's inlet management project list which~~
380 ~~involve the study for, or design or development of, an inlet~~
381 ~~management project.~~

382 ~~(c) The department shall make available all statewide beach~~
383 ~~management funds that remain unencumbered or are allocated to~~
384 ~~non-project-specific activities for projects on legislatively~~
385 ~~approved inlet management project lists. Funding for local-~~
386 ~~government-specific projects on annual project lists approved by~~
387 ~~the Legislature must remain available for such purposes for a~~
388 ~~period of 18 months pursuant to s. 216.301(2)(a). Based on an~~
389 ~~assessment and the department's determination that a project~~
390 ~~will not be ready to proceed during this 18-month period, such~~
391 ~~funds shall be used for inlet management projects on~~
392 ~~legislatively approved lists.~~

393 ~~(5)(d) The Legislature shall designate one of the three~~
394 ~~highest projects on the inlet management project list in any~~
395 ~~year as the Inlet of the Year. The department shall update and~~
396 ~~maintain an annual annually report on its website to the~~
397 ~~Legislature concerning the extent to which each inlet project~~
398 ~~designated by the Legislature as Inlet of the Year has succeeded~~
399 ~~in balancing the sediment budget of the inlet and adjacent~~
400 ~~beaches and in mitigating the inlet's erosive effects on~~
401 ~~adjacent beaches. The report must provide an estimate of the~~
402 ~~quantity of sediment bypassed, transferred, and transferring or~~
403 ~~otherwise placed placing beach-quality sand on adjacent eroding~~



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404 beaches, or in such beaches' nearshore area, for the purpose of
405 offsetting the erosive effects of inlets on the beaches of this
406 state.

407 ~~(e) Notwithstanding paragraphs (a) and (b), and for the~~
408 ~~2016-2017 fiscal year only, the amount allocated for inlet~~
409 ~~management funding is provided in the 2016-2017 General~~
410 ~~Appropriations Act. This paragraph expires July 1, 2017.~~

411 Section 4. Effective July 1, 2018, subsections (1) and (2)
412 of section 161.161, Florida Statutes, are amended, and present
413 subsections (3) through (7) are redesignated as subsections (4)
414 through (8), respectively, to read:

415 161.161 Procedure for approval of projects.-

416 (1) The department shall develop and maintain a
417 comprehensive long-term beach management plan for the
418 restoration and maintenance of the state's critically eroded
419 beaches fronting the Atlantic Ocean, Gulf of Mexico, and Straits
420 of Florida. In developing and maintaining this the beach
421 management plan, the department shall:

422 (a) Address long-term solutions to the problem of
423 critically eroded beaches in this state.

424 (b) Evaluate each improved, modified, or altered inlet and
425 determine whether the inlet is a significant cause of beach
426 erosion. With respect to each inlet determined to be a
427 significant cause of beach erosion, the plan shall include:

428 ~~±~~ the extent to which such inlet causes beach erosion and
429 recommendations to mitigate the erosive impact of the inlet,
430 including, but not limited to, ~~recommendations regarding~~ inlet
431 sediment bypassing; improvement of infrastructure to facilitate
432 sand bypassing; modifications to channel dredging, jetty design,



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433 and disposal of spoil material; establishment of feeder beaches;
434 and beach restoration and beach nourishment; ~~and~~

435 ~~2. Cost estimates necessary to take inlet corrective~~
436 ~~measures and recommendations regarding cost sharing among the~~
437 ~~beneficiaries of such inlet.~~

438 (c) Evaluate ~~Design~~ criteria for beach restoration and
439 beach nourishment projects, including, but not limited to, ~~±~~
440 ~~±~~ dune elevation and width and revegetation and
441 stabilization requirements, ~~±~~ and

442 ~~2. beach profiles profile.~~

443 (d) Consider ~~Evaluate~~ the establishment of regional
444 sediment management alternatives for one or more individual
445 beach and inlet sand bypassing projects ~~feeder beaches~~ as an
446 alternative to ~~direct~~ beach restoration when appropriate and
447 cost-effective, and recommend the location of such regional
448 sediment management alternatives ~~feeder beaches~~ and the source
449 of beach-compatible sand.

450 (e) Identify causes of shoreline erosion and change,
451 determine ~~calculate~~ erosion rates, and maintain an updated list
452 of critically eroded sandy beaches based on data, analyses, and
453 investigations of shoreline conditions and project long-term
454 erosion for all major beach and dune systems by surveys and
455 profiles.

456 (f) ~~Identify shoreline development and degree of density~~
457 ~~and~~ Assess impacts of development and coastal protection
458 ~~shoreline protective~~ structures on shoreline change and erosion.

459 (g) Identify short-term and long-term economic costs and
460 benefits of beaches to the state of Florida and individual beach
461 communities, including recreational value to user groups, tax



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462 ~~base, revenues generated, and beach acquisition and maintenance~~
463 ~~costs.~~

464 (h) Study dune and vegetation conditions, identify existing
465 beach projects without dune features or with dunes without
466 adequate elevations, and encourage dune restoration and
467 revegetation to be incorporated as part of storm damage recovery
468 projects or future dune maintenance events.

469 (i) Identify beach areas used by marine turtles and develop
470 strategies for protection of the turtles and their nests and
471 nesting locations.

472 (j) Identify alternative management responses to preserve
473 undeveloped beach and dune systems ~~and~~, to restore damaged beach
474 and dune systems. In identifying such management responses, the
475 department shall consider, at a minimum, and to prevent
476 inappropriate development and redevelopment on migrating
477 beaches, and consider beach restoration and nourishment,
478 armoring, relocation and abandonment, dune and vegetation
479 restoration, and acquisition.

480 (k) Document procedures and policies for preparing post-
481 storm damage assessments and corresponding recovery plans,
482 including repair cost estimates ~~Establish criteria, including~~
483 ~~costs and specific implementation actions, for alternative~~
484 ~~management techniques.~~

485 (l) Identify and assess ~~Select and recommend~~ appropriate
486 management measures for all of the state's critically eroded
487 sandy beaches in a beach management program.

488 ~~(m) Establish a list of beach restoration and beach~~
489 ~~nourishment projects, arranged in order of priority, and the~~
490 ~~funding levels needed for such projects.~~



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491 (2) The comprehensive long-term management plan developed
492 and maintained by the department pursuant to subsection (1) must
493 include, at a minimum, a strategic beach management plan, a
494 critically eroded beaches report, and a statewide long-range
495 budget plan. The long-range budget plan must include a 3-year
496 work plan for beach restoration, beach nourishment, and inlet
497 management projects that lists planned projects for each of the
498 3 fiscal years addressed in the work plan.

499 (a) The strategic beach management plan must identify and
500 recommend appropriate measures for all of the state's critically
501 eroded sandy beaches and may incorporate plans be prepared at
502 the regional level taking into account based upon areas of
503 greatest need and probable federal and local funding. Upon
504 approval in accordance with this section, such regional plans,
505 along with the 3-year work plan identified in subparagraph

506 (c)1., shall be components of the statewide beach management
507 plan and shall serve as the basis for state funding decisions
508 upon approval in accordance with chapter 86-138, Laws of
509 Florida. In accordance with a schedule established for the
510 submission of regional plans by the department, any completed
511 plan must be submitted to the secretary of the department for
512 approval no later than March 1 of each year. These regional
513 plans shall include, but shall not be limited to,
514 recommendations of appropriate funding mechanisms for
515 implementing projects in the beach management plan, giving
516 consideration to the use of single county and multicounty taxing
517 districts or other revenue generation measures by state and
518 local governments and the private sector. Prior to finalizing
519 the strategic beach management presenting the plan to the



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520 ~~secretary of the department, the department shall hold a public~~
521 ~~meeting in the region areas for which the plan is prepared or~~
522 ~~through a publicly noticed webinar. The plan submission schedule~~
523 ~~shall be submitted to the secretary for approval. Any revisions~~
524 ~~to such schedule must be approved in like manner.~~

525 (b) The critically eroded beaches report must be developed
526 and maintained based primarily on the requirements specified in
527 paragraph (1)(e).

528 (c) The statewide long-range budget plan must include at
529 least 5 years of planned beach restoration, beach nourishment,
530 and inlet management project funding needs as identified, and
531 subsequently refined, by local government sponsors. This plan
532 shall consist of two components:

533 1. A 3-year work plan that identifies beach restoration,
534 beach nourishment, and inlet management projects viable for
535 implementation during the next 3 ensuing fiscal years, as
536 determined by available cost-sharing, local sponsor support,
537 regulatory considerations, and the ability of the project to
538 proceed as scheduled. The 3-year work plan must, for each fiscal
539 year, identify proposed projects and their current development
540 status, listing them in priority order based on the applicable
541 criteria established in ss. 161.101(14) and 161.143(2). Specific
542 funding requests and criteria ranking, pursuant to ss.
543 161.101(14) and 161.143(2), may be modified as warranted in each
544 successive fiscal year, and such modifications must be
545 documented and submitted to the Legislature with each 3-year
546 work plan. Year one projects shall consist of those projects
547 identified for funding consideration in the ensuing fiscal year.

548 2. A long-range plan that identifies projects for inclusion



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549 in the fourth and fifth ensuing fiscal years. These projects may
550 be presented by region and do not need to be presented in
551 priority order; however, the department should identify issues
552 that may prevent successful completion of such projects and
553 recommend solutions that would allow the projects to progress
554 into the 3-year work plan.

555 ~~(3)(2) Annually,~~ The secretary shall annually present the
556 3-year work plan to the Legislature. The work plan must be
557 accompanied by a 3-year financial forecast for the availability
558 of funding for the projects, based on funds dedicated in s.
559 375.041 recommendations for funding beach erosion control
560 projects prioritized according to the criteria established in s.
561 161.101(14).

562 Section 5. Paragraph (b) of subsection (3) of section
563 375.041, Florida Statutes, is amended to read:

564 375.041 Land Acquisition Trust Fund.—

565 (3) Funds distributed into the Land Acquisition Trust Fund
566 pursuant to s. 201.15 shall be applied:

567 (b) Of the funds remaining after the payments required
568 under paragraph (a), but before funds may be appropriated,
569 pledged, or dedicated for other uses:

570 1. A minimum of the lesser of 25 percent or \$200 million
571 shall be appropriated annually for Everglades projects that
572 implement the Comprehensive Everglades Restoration Plan as set
573 forth in s. 373.470, including the Central Everglades Planning
574 Project subject to Congressional authorization; the Long-Term
575 Plan as defined in s. 373.4592(2); and the Northern Everglades
576 and Estuaries Protection Program as set forth in s. 373.4595.
577 From these funds, \$32 million shall be distributed each fiscal



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578 year through the 2023-2024 fiscal year to the South Florida
579 Water Management District for the Long-Term Plan as defined in
580 s. 373.4592(2). After deducting the \$32 million distributed
581 under this subparagraph, from the funds remaining, a minimum of
582 the lesser of 76.5 percent or \$100 million shall be appropriated
583 each fiscal year through the 2025-2026 fiscal year for the
584 planning, design, engineering, and construction of the
585 Comprehensive Everglades Restoration Plan as set forth in s.
586 373.470, including the Central Everglades Planning Project
587 subject to Congressional authorization. The Department of
588 Environmental Protection and the South Florida Water Management
589 District shall give preference to those Everglades restoration
590 projects that reduce harmful discharges of water from Lake
591 Okeechobee to the St. Lucie or Caloosahatchee estuaries in a
592 timely manner. For the purpose of performing the calculation
593 provided in this subparagraph, the amount of debt service paid
594 pursuant to paragraph (a) for bonds issued after July 1, 2016,
595 for the purposes set forth under paragraph (b) shall be added to
596 the amount remaining after the payments required under paragraph
597 (a). The amount of the distribution calculated shall then be
598 reduced by an amount equal to the debt service paid pursuant to
599 paragraph (a) on bonds issued after July 1, 2016, for the
600 purposes set forth under this subparagraph.

601 2. A minimum of the lesser of 7.6 percent or \$50 million
602 shall be appropriated annually for spring restoration,
603 protection, and management projects. For the purpose of
604 performing the calculation provided in this subparagraph, the
605 amount of debt service paid pursuant to paragraph (a) for bonds
606 issued after July 1, 2016, for the purposes set forth under



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607 paragraph (b) shall be added to the amount remaining after the
608 payments required under paragraph (a). The amount of the
609 distribution calculated shall then be reduced by an amount equal
610 to the debt service paid pursuant to paragraph (a) on bonds
611 issued after July 1, 2016, for the purposes set forth under this
612 subparagraph.

613 3. The sum of \$5 million shall be appropriated annually
614 each fiscal year through the 2025-2026 fiscal year to the St.
615 Johns River Water Management District for projects dedicated to
616 the restoration of Lake Apopka. This distribution shall be
617 reduced by an amount equal to the debt service paid pursuant to
618 paragraph (a) on bonds issued after July 1, 2016, for the
619 purposes set forth in this subparagraph.

620 4. A minimum of the lesser of 7.6 percent or \$50 million
621 shall be appropriated annually for projects that preserve and
622 repair the state's beaches as provided in s. 161.091(3). The
623 calculation provided in this subparagraph shall be performed
624 using the same formula as described in subparagraph 2.

625 Section 6. Except as otherwise provided in this act, this
626 act shall take effect July 1, 2017.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 1590

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on the Environment and Natural Resources); Environmental Preservation and Conservation Committee; and Senator Latvala and others

SUBJECT: Coastal Management

DATE: April 21, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Istler	Rogers	EP	Fav/CS
2. Reagan	Betta	AEN	Recommend: Fav/CS
3. Reagan	Hansen	AP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 1590 revises the beach nourishment and inlet management project funding criteria and requires a minimum distribution of the lesser of 7.6 percent of the funds remaining after the payment of debt service or \$50 million to be appropriated annually from the Land Acquisition Trust Fund for projects that preserve and repair the state's beaches in accordance with the revised project funding criteria.

II. Present Situation:

Beach and Shore Preservation

Fronting the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida, the state has 825 miles of sandy coastline.¹ Beaches are one of Florida's most valuable resources and serve multiple important functions including providing habitat and protection for several species of plants and animals, attracting visitors and new residents to the state, and providing a line of defense against

¹ Florida Department of Environmental Protection (DEP), *Beaches and Coastal Systems: About Us*, <http://www.dep.state.fl.us/beaches/> (last visited Mar. 16, 2017).

major storms.² Specifically, beaches are the most important feature of Florida's brand, accounting for 25.5 percent of the state's attractiveness to visitors.³

Beaches require ongoing maintenance to curtail erosion, which threatens this valuable state resource.⁴ While beaches are naturally prone to erosion due to natural forces, such as wind-driven currents and tides and storms, human-induced erosion is attributable to the construction and maintenance of navigation inlets and the development and placement of infrastructure in close proximity to the shore.⁵

Critically Eroded Beaches Report

The Florida Department of Environmental Protection (DEP) is required to determine which beaches are critically eroded and in need of restoration and nourishment.⁶ According to the DEP, there are 411.2 miles of critically eroded beach, 8.7 miles of critically eroded inlet shoreline, 93.5 miles of non-critically eroded beach, and 3.2 miles of non-critically eroded inlet shoreline statewide.⁷ Erosion is critical if “there is a threat to or loss of one of four specific interests – upland development, recreation, wildlife habitat, or important cultural resources.”⁸

One way to restore eroded beaches is through beach nourishment, which is the replacement of sand that a beach has lost.⁹ In a typical beach nourishment project, sand is collected from an offshore location by a dredge and piped onto the beach.¹⁰ Bulldozers are then used to move the new sand on the beach until the beach matches the project design profile.¹¹ The DEP is authorized to review innovative technologies for beach nourishment and, on a limited basis, authorize alternatives to traditional dredge and fill projects to determine the most cost-effective techniques for beach nourishment.¹²

² *Id.*

³ Office of Economic & Demographic Research (EDR), *Economic Evaluation of Florida's Investment in Beaches: Identifying the State's Brand, Calculating the Return on Investment of Beach Restoration and Assessing the Risk of Disasters*, 1 (Jan. 2015), available at <http://edr.state.fl.us/Content/returnoninvestment/BeachReport.pdf> (last visited Mar. 16, 2017).

⁴ DEP, *Beaches and Coastal Systems: Why Restore Eroded Beaches?*, <http://www.dep.state.fl.us/beaches/programs/becp/restore.htm> (last visited Mar. 16, 2017).

⁵ DEP, *Strategic Beach Management Plan*, 1 (July 2015), available at <http://www.dep.state.fl.us/beaches/publications/pdf/SBMP/SBMP-Introduction.pdf> (last visited Mar. 16, 2017).

⁶ Section 161.101(1), F.S.

⁷ DEP, Division of Water Resource Management, *Critically Eroded Beaches in Florida*, 4, 5 (Aug. 2016), available at <http://www.dep.state.fl.us/beaches/publications/pdf/CriticalErosionReport.pdf> (last visited Mar. 16, 2017). The term “critically eroded shoreline” is defined in Fla. Admin. Code R. 62B-36.002 to mean “a segment of shoreline where natural processes or human activities have caused, or contributed to, erosion and recession of the beach and dune system to such a degree that upland development, recreational interests, wildlife habitat or important cultural resources are threatened or lost. Critically eroded shoreline may also include adjacent segments or gaps between identified critical erosion areas which, although they may be stable or slightly erosional now, their inclusion is necessary for continuity of management of the coastal system or for the design integrity of adjacent beach management projects.”

⁸ DEP, Division of Water Resource Management, *Critically Eroded Beaches in Florida*, 7 (Aug. 2016).

⁹ See s. 161.021, F.S.

¹⁰ DEP, *Beaches and Coastal Systems: Why Restore Eroded Beaches?*, <http://www.dep.state.fl.us/beaches/programs/becp/restore.htm> (last visited Mar. 16, 2017).

¹¹ *Id.*

¹² Section 161.082, F.S.

Strategic Beach Management Plan

The DEP is required to develop and maintain a comprehensive long-term management plan for the restoration and maintenance of the state's critically eroded beaches.¹³ The beach management plan is required, in part, to:

- Address long-term solutions to the problem of critically eroded beaches;
- Evaluate each improved, modified, or altered inlet and determine whether the inlet is a significant cause of beach erosion;
- Design criteria for beach restoration and beach nourishment projects;
- Identify causes of shoreline erosion and change, calculate erosion rates, and project long-term erosion for all major beach and dune systems by surveys and profiles;
- Study dune and vegetative conditions; and
- Establish a prioritized list of beach restoration and beach nourishment projects and the funding levels needed for such projects.¹⁴

The State Beach Management Plan (SBMP) is a dynamic management tool for use by state, local, and federal government officials. The SBMP is updated periodically as specific strategies are implemented, new resources and opportunities are identified, and proposed strategies are developed by the DEP and federal or local government sponsors. The DEP prepares the SBMP at the regional level.¹⁵ The regional plans include recommendations of appropriate funding mechanisms for implementing projects in the beach management plan and describe the historical and present beach restoration activities taken to restore and manage Florida's beaches.¹⁶

Long Range Budget Plan

The statewide long range budget plan projects the 10-year planning needs for federal, state, and local governments necessary to implement the SBMP.¹⁷ The budget plan is subdivided by the same regions as the SBMP and provides a statewide view of many individual project efforts. The budget plan is used to encourage cooperation and coordination among local, state, and federal entities and organizations responsible for managing beaches.

Beach Management Funding Assistance Program

Pursuant to declared state public policy, the Legislature is required to fund beach restoration and nourishment projects, including inlet management projects, that cost-effectively provide beach-quality material for adjacent critically eroded beaches.¹⁸ Such projects must be in an area designated as critically eroded shoreline, or benefit an adjacent critically eroded shoreline; have a clearly identifiable beach management benefit consistent with the state's beach management plan; and be designed to reduce potential upland damage or mitigate adverse impacts caused by improved, modified, or altered inlets, coastal armoring, or existing upland development.¹⁹

¹³ Section 161.161, F.S.

¹⁴ *Id.*

¹⁵ See DEP, *Beaches and Coastal Systems: Publications*, <http://www.dep.state.fl.us/beaches/publications/index.htm#SBMP> (last visited Mar. 16, 2017), for each regional plan.

¹⁶ Section 161.161, F.S.

¹⁷ DEP, *Florida Beach Management Program, Long Range Budget Plan for 2017-2027*, 1 (Dec. 1, 2016), available at <http://www.dep.state.fl.us/beaches/programs/becp/docs/LRBP-FY1727.pdf> (last visited Mar. 16, 2017).

¹⁸ Section 161.088, F.S.

¹⁹ *Id.*

The DEP authorizes disbursements made to the DEP from the Land Acquisition Trust Fund (LATF) to carry out the state's responsibilities for a comprehensive, long-range, statewide beach management plan for erosion control; beach preservation, restoration, and nourishment; storm and hurricane protection; and other activities authorized pursuant to s. 28, Article X of the State Constitution.²⁰ The DEP established the Beach Management Funding Assistance Program for the purpose of working in concert with local, state, and federal governmental entities to achieve the protection, preservation, and restoration of Florida's sandy beaches.²¹

Section 161.101, F.S., authorizes the state to pay up to 75 percent of the actual costs for restoring and nourishing critically eroded beaches in recognition that local beach communities derive the primary benefits from the presence of adequate beaches.²² The local government in which the beach is located is responsible for the balance of such costs.²³ However, that section of law also provides that "until the unmet demand for repairing Florida's damaged beaches and dunes is satisfied, it is the further intent of the Legislature to cost share such projects equally between the state and local sponsors."²⁴

In order to receive state funds, projects are required to provide adequate public access, protect natural resources, and protect endangered and threatened species.²⁵ Additionally, the DEP is not authorized to fund projects that provide only recreational benefits. All funded projects are required to have an identifiable beach erosion control or beach preservation benefit directed toward maintaining or enhancing the sand in the system. All of the following activities are ineligible for cost-sharing:

- Recreational structures, such as piers, decks, and boardwalks.
- Park activities and facilities, except for erosion control.
- Aesthetic vegetation.
- Water quality components of stormwater management systems.
- Experimental or demonstration projects, unless favorably peer-reviewed or scientifically documented.
- Hard structures, unless designed for erosion control or to enhance beach nourishment project longevity or bypassing performance.
- Operations and maintenance, with the exception of nourishment.
- Maintenance and repair of over-walks.
- Navigation construction, operation, and maintenance activities, except those elements whose purpose is to place or keep sand on adjacent beaches.²⁶

The DEP is required to consider the following criteria in determining annual funding priorities:

- The severity of erosion conditions, the threat to existing upland development, and recreational or economic benefits;

²⁰ Section 161.091(1), F.S.

²¹ Fla. Admin. Code R. 62B-36.001.

²² Section 161.101(1), F.S.

²³ *Id.*

²⁴ Section 161.101(15), F.S.

²⁵ Section 161.101(12), F.S.

²⁶ Section 161.101(13), F.S.

- The availability of federal matching dollars;
- The extent of the local government sponsor’s financial and administrative commitment to the project, including a long-term financial plan with a designated funding source for initial construction and periodic maintenance;
- Previous state commitment and involvement in the project;
- The anticipated physical performance of the proposed project, including the frequency of periodic planned nourishment;
- The extent to which the proposed project mitigates the adverse impact of improved, modified, or altered inlets on adjacent beaches;
- Innovative, cost-effective, and environmentally sensitive applications to reduce erosion;
- Projects that provide enhanced habitat within or adjacent to designated refuges of nesting sea turtles;
- The extent to which local or regional sponsors of beach erosion control projects agree to coordinate the planning, design, and construction of their projects to take advantage of identifiable cost savings; and
- The degree to which the project addresses the state’s most significant beach erosion problems.²⁷

The DEP established a priority ranking system to implement the statutory criteria for beach and inlet management projects for funding assistance.²⁸ The ranking system is based on points. Under the system a project receives a total point score based on project ranking criteria. The total amount of points available for beach management projects is 115 points and the total for inlet

Statutory Criteria	Number of Component Criteria	Available Points
Beach Management		
Significance	6	20
Local Sponsor Financial and Administrative Commitment	6	10
Previous State Commitment	4	10
Availability of Federal Funds	3	10
Project Performance	2	10
Recreational and Economic Benefits	1	10
Severity of Erosion	1	10
Mitigation of Inlet Effects	1	10
Threat to Upland Structures	1	10
Innovative Technologies	2	5
Regionalization	1	5
Enhance Refuges of Nesting Sea Turtle	1	5
Total	29	115

Statutory Criteria	Number of Component Criteria	Available Points
Inlet Management		
Balancing the Sediment Budget	1	20
Inlet Management Plan	3	15
Local Sponsor Financial and Administrative Commitment	6	10
Previous State Commitment	4	10
Availability of Federal Funding	3	10
Sand Reaching the Inlet	1	10
Cost Effectiveness	1	10
Enhanced Project Performance	1	5
Total	20	90

²⁷ Section 161.101(14), F.S.

²⁸ Fla. Admin. Code R. 62B-36.006.

management projects is 90 points.²⁹ The charts provided above indicate the number of component criteria under each statutory criteria as developed by the DEP.³⁰

In December of 2014, the Office of Program Policy Analysis and Government Accountability (OPPAGA) released a report evaluating the DEP process for selecting and prioritizing beach management and inlet management projects. The review considered the current statutory criteria and related administrative rules and the funding request application process, information requirements, and timeline. Further, OPPAGA reviewed how the DEP uses each ranking criteria for establishing the annual priority order for beach management and restoration projects.

The report made several findings, including:

- Certain criteria accounts for the majority of the points awarded;
- Certain criteria only applies to a limited number of projects;
- The criteria do not adequately take into account the economic impact of beach projects;
- The criteria do not adequately account for a project's cost effectiveness or performance;
- The criteria do not take into account the impacts of recent storms or the current conditions of the shoreline;
- Stakeholders found the application requirements for funding to be too complicated and time consuming; and
- Stakeholders perceived a bias for projects that received federal funding.³¹

The American Society of Civil Engineers rated Florida's coastal areas infrastructure as a D+, citing to the fact that over the last 10 years, the average difference between requested and state appropriated funds exceeded \$40 million per year.³² The Office of Economic and Demographic Research determined that the state's investment in beach management and restoration generated a positive return on investment of 5.4.³³ A return greater than one means that the tax revenues generated by tourists to the state more than cover the state's expenditures on beaches.

Land Acquisition Trust Fund

Documentary stamp tax revenues are collected under ch. 201, F.S., which requires an excise tax to be levied on two classes of documents: deeds and other documents related to real property, which are taxed at the rate of \$0.70 per \$100; and certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements, which are taxed at \$0.35 per \$100.³⁴

²⁹ See DEP, *Beach Management Funding Assistance Program, Local Government Funding Requests: Ranking Criteria for Beach and Inlet Management Projects*, (Updated 2013), available at <http://www.dep.state.fl.us/BEACHES/programs/becp/docs/ranking-methodology-62B36.pdf> (last visited Mar. 17, 2017).

³⁰ Office of Program Policy Analysis & Government Accountability (OPPAGA), *The Beach Management Funding Assistance Program Was Recently Improved, but Some Stakeholder Concerns Persist*, 4 (Dec. 2014), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1412rpt.pdf> (last visited Mar. 17, 2017).

³¹ *Id.* at 6-12.

³² American Society of Civil Engineers, *2016 Report Card for Florida's Infrastructure*, http://www.infrastructurereportcard.org/wp-content/uploads/2017/01/2016_RC_Final_screen.pdf (last visited Mar. 16, 2017).

³³ EDR, *Economic Evaluation of Florida's Investment in Beaches: Identifying the State's Brand, Calculating the Return on Investment of Beach Restoration and Assessing the Risk of Disasters*, 1 (Jan. 2015).

³⁴ See ss. 201.02 and 201.08, F.S.

In 2014, Florida voters approved Amendment One, a constitutional amendment to provide a dedicated funding source for water and land conservation and restoration. The amendment required that starting on July 1, 2015, and for 20 years thereafter, 33 percent of net revenues derived from the documentary stamp taxes be deposited into the LATF. Article X, s. 28 of the State Constitution requires that funds in the LATF be expended only for the following purposes:

As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.³⁵

To implement Art. X, s. 28 of the State Constitution, the Legislature in the 2015 Special Session A passed ch. 2015-229, Laws of Florida.³⁶ This act, in part, amended the following sections of law:

- Section 201.15, F.S., to conform to the constitutional requirement that the LATF receive at least 33 percent of net revenues derived from documentary stamp taxes; and
- Section 375.041, F.S., to designate the LATF within the Department of Environmental Protection as the trust fund to serve as the constitutionally mandated depository for a percentage of the documentary stamp tax revenues.³⁷

In 2016, the Legislature passed ch. 2016-201, Laws of Florida, referred to as “Legacy Florida.”³⁸ Legacy Florida amended s. 375.041, F.S., to require specified minimum distributions from the LATF. Under s. 375.041, F.S., funds deposited into the LATF must be distributed in the following order and amounts:

- First, obligations relating to debt service, specifically:
 - First to payments relating to debt service on Florida Forever bonds and Everglades restoration bonds; and
 - Then to payments relating to debt service on bonds issued before February 1, 2009, by the South Florida Water Management District and the St. Johns River Water Management District;
- Then, before funds are authorized to be appropriated for other uses:

³⁵ FLA. CONST. art. X, s. 28.

³⁶ Chapter 2015-229, Laws of Fla.

³⁷ Chapter 2015-229, s. 9, s. 50, Laws of Fla.

³⁸ Chapter 2016-201, Laws of Fla.

- A minimum of the lesser of 25 percent of the funds remaining after the payment of debt service or \$200 million annually for Everglades projects that implement the Comprehensive Everglades Restoration Plan (CERP), the Long-Term Plan,³⁹ or the Northern Everglades and Estuaries Protection Program (NEEPP), with priority given to Everglades projects that reduce harmful discharges of water from Lake Okeechobee to the St. Lucie or Caloosahatchee estuaries in a timely manner. The following specified distributions are required from these funds:
 - \$32 million through the 2023-2024 fiscal year for the Long-Term Plan;
 - After deducting the \$32 million, the minimum of the lesser of 76.5 percent of the remainder or \$100 million through the 2025-2026 Fiscal Year for the CERP; and
 - Any remaining funds for Everglades projects under the CERP, the Long-Term Plan, or the NEEPP.
- A minimum of the lesser of 7.6 percent of the funds remaining after the payment of debt service or \$50 million annually for springs restoration, protection, and management projects; and
- Five million annually to the St. Johns River Water Management District for projects dedicated to the restoration of Lake Apopka.⁴⁰
- Then any remaining moneys are authorized to be appropriated for the purposes set forth in Art. X, s. 28 of the State Constitution.⁴¹

The General Revenue Estimating Conference in December of 2016 estimated that for the 2017-2018 fiscal year a total of \$2.48 billion would be collected in documentary stamp taxes. Thirty-three percent of the net revenues collected or approximately \$814.1 million must be deposited into the LATF as required under Art. X, s. 28 of the State Constitution.⁴²

III. Effect of Proposed Changes:

Beach Management Project Funding

Section 1 amends s. 161.101(14), F.S., to revise the beach management project funding criteria and require the Department of Environmental Protection (DEP) to adopt by rule a scoring system to determine annual funding priorities. The bill requires the scoring system to be consistent with the following criteria equally weighted within the following specified tiers:

Tier 1 (20 percent of the total project score)

Tier 1 consists of the tourism-related return on investment and economic impact of the project. The return on investment of the project equals the ratio of the tourism-related tax revenues for the most recent year to the amount of state funding requested for the proposed project. The economic impact of the project equals the ratio of the tourism-related tax revenues to all county tax revenues for the most recent year.

³⁹ Note that the “Long-Term Plan” includes the Restoration Strategies Regional Water Quality Plan.

⁴⁰ Section 375.041, F.S.

⁴¹ *Id.*

⁴² EDR, Revenue Estimating Conference, *Documentary Stamp Tax, Executive Summary* (Dec. 12, 2016) available at <http://www.edr.state.fl.us/Content/conferences/docstamp/docstampexecsummary.pdf> (last visited Mar. 15, 2017).

The DEP is required to calculate such ratios using state sales tax and tourism development tax data of the county having jurisdiction over the project area. If multiple counties have jurisdiction over the project area, the DEP is required to assess each county individually using these ratios and then calculate the average of the ratios of each county to determine the final overall assessment for a multicounty project.

Tier 2 (45 percent of the total project score)

Tier 2 consists of the following criteria:

- The availability of federal matching dollars, considering federal authorization, the federal cost-share percentage, and the status of the funding award;
- The storm damage reduction benefits of the project based on the following considerations:
 - The current conditions of the project area, including any recent storm damage impacts, as a percentage of the volume of sand lost since the most recent beach nourishment event or most recent beach surveys. If the project area has not been previously restored, the DEP must use the historical background erosion rate;
 - The overall potential threat to existing upland development, including public and private structures and infrastructure, based on the percentage of vulnerable shoreline within the project boundaries;
 - The value of upland property benefiting from the protection provided by the project and its subsequent maintenance. A property must be within one-quarter mile of the project boundaries to be considered under this criterion; and
- The cost-effectiveness of the project based on the yearly cost per volume per mile of proposed beach fill placement. The DEP is required to consider the following criteria when assessing cost-effectiveness:
 - The existence of projects with proposed structural or design components to extend the beach nourishment interval;
 - Existing beach nourishment projects that reduce upland storm damage costs by incorporating new or enhanced dune structures or new or existing dune restoration and revegetation projects;
 - Proposed innovative technologies designed to reduce project costs; and
 - Regional sediment management strategies and coordination to conserve sand source resources and reduce project costs.

Tier 3 (20 percent of the total project score)

Tier 3 consists of the following criteria:

- Previous state commitment and involvement in the project, considering previously funded phases, the total amount of previous state funding, and previous partial appropriations for the proposed project;
- The recreational benefits of the project based on:
 - The accessible beach area added by the project; and
 - The percentage of linear footage within the project boundaries that is zoned:
 - As recreational or open space;
 - For commercial use; or
 - Otherwise allows for public lodging establishments;
- The extent to which the project mitigates the adverse impact of improved, modified, or altered inlets on adjacent beaches; and

- The degree to which the project addresses the state’s most significant beach erosion problems based on the ratio of the linear footage of the project shoreline to the cubic yards of sand placed per mile per year.

Tier 4 (15 percent of the total project score)

Tier 4 consists of:

- Increased prioritization of projects that have been on the DEP’s ranked project list for successive years and that have not previously secured state funding for project implementation;
- Environmental habitat enhancement, recognizing state or federal critical habitat areas for threatened or endangered species that may be subject to extensive shoreline armoring or recognizing areas where extensive shoreline armoring threatens the availability or quality of habitat for such species. Turtle-friendly designs, dune and vegetation projects for areas with redesigned or reduced fill templates, proposed incorporation of best management practices and adaptive management strategies to protect resources, and innovative technologies designed to benefit critical habitat preservation; and
- The overall readiness of the project to proceed in a timely manner considering the project’s readiness for the construction phase of development, the status of required permits, the status of any needed easement acquisition, the availability of local funding sources, and the establishment of an erosion control line. If the DEP identifies specific reasonable and documented concerns that the project will not proceed in a timely manner, the DEP may choose not to include the project in the annual funding priorities submitted to the Legislature.

Section 2 amends s. 161.101(20), F.S., to revise provisions relating project lists, reporting requirements, and surplus funding in the following manner:

Project lists, notification, and summary reports

Section 2 requires the DEP to update their active project list at least quarterly, rather than by fiscal year. Section 2 also revises the definition of the term “significant change” to include a project-specific change or cumulative changes that exceed the project’s original allocation by \$500,000 or more. The revised definition requires the DEP to notify the Governor and the Legislature when such change exceeds the project’s original allocation by \$500,000 or more in addition to a change exceeding 25 percent of the original allocation.

The DEP is required to prepare a summary of project activities, their funding status, and changes to annual project lists for the current and preceding fiscal year, which must be included in the DEP’s submission of its annual legislative budget request.

Funding for specific projects on annual project lists approved by the Legislature is required to remain available for 18 months. The bill requires the DEP, rather than the local project sponsor, to notify the Executive Office of the Governor and the Legislature when appropriated project dollars are released to a project sponsor.

Surplus funding

Section 2 requires the DEP to provide supporting justification in addition to notification to the Executive Office of the Governor and the Legislature regarding its intent regarding the use of surplus dollars for projects that have a significant change. The bill authorizes such surplus funds to be used for beach restoration and nourishment projects in addition to being available for inlet management projects, reversion as part of the next appropriations process, or used for other specified priority projects on active project lists.

The DEP is not required to provide such notice and justification for the use of surplus funds for projects that do not have a significant change. However, the DEP must post the uses of such surplus funds on the project-listing page on its website.

Inlet Management Projects

Section 3 amends s. 161.143, F.S., to revise the funding priorities for inlet management projects.

Section 3 requires that projects considered for funding under the inlet management program are required to be considered separate and apart from projects reviewed and prioritized under the tiered structure for beach nourishment projects. The bill requires that the inlet management projects funded by the DEP constitute the intended scope of inlet management and of the state's public policy relating to improved navigation inlets found in s. 161.142, F.S. The bill expands the types of inlet management projects that the DEP may consider for priority funding to include improvements of infrastructure to facilitate sand bypassing.

Section 3 requires the DEP to give equal consideration to the listed criteria and revises such ranking criteria by:

- Requiring the DEP to consider the cost-effectiveness of sand made available by a proposed inlet management project or activity relative to other sand source opportunities that could be used to address inlet-caused erosion;
- Removing the term “existing” from the provision requiring the DEP to consider the extent to which bypassing activities at an inlet would benefit from modest, cost-effective improvements when considering the volumetric increases from the proposed project;
- Removing the requirement that the DEP consider the interest and commitment of local governments as demonstrated by their willingness to coordinate the planning, design, construction, and maintenance of an inlet management project and their financial plan for funding the local cost share for initial construction, ongoing sand bypassing, channel dredging, and maintenance;
- Revising the requirements relating to inlet management plans or local-government-sponsored inlet studies by requiring the DEP to consider the existence of a proposed or recently updated inlet management plan or a local-government-sponsored inlet study addressing the mitigation of an inlet's erosive effects on adjacent beaches; and
- Clarifying that the DEP is to consider the criteria used for ranking beach nourishment projects for inlet management projects if the criteria is distinct from and not duplicative of the inlet management project ranking criteria.

Section 3 authorizes the DEP to pay from legislative appropriations up to 75 percent of the construction costs of an initial major inlet management project component for the purpose of mitigating the erosive effects of the inlet to the shoreline and balancing sediment budget. The remaining balance is required to be paid from other funding sources, such as local sponsors. All other project costs not associated with an initial major project component are required to be shared equally by state and local sponsors.

Section 3 removes the authorization for the DEP to employ university-based or other contractual sources for studies that are consistent with the public policy of the state relating to improved navigation inlets.

Section 3 revises the requirements for the inlet management project list, which the DEP is required to submit to the Legislature by:

- Removing the requirement that:
 - The list include studies, projects, or other activities that address the management of at least 10 separate ranked inlets;
 - At least 50 percent of the funds appropriated for feasibility and design category in the DEP's fixed capital outlay funding request be available for projects on the current year's inlet management project list which involve the study for, or design or development of, an inlet management project;
 - All statewide beach management funds that remain unencumbered or are allocated to non-project-specific activities for projects on legislatively approved inlet management project lists be made available;
 - The Legislature designate one of the three highest projects on the inlet management project list in any year as the Inlet of the Year and requirements of the DEP relating thereto; and
- Requiring that the DEP:
 - Designate for projects on the current year's list, in priority order, an amount that is at least equal to the greater of:
 - Ten percent of the total amount that the Legislature appropriates in the fiscal year for statewide beach management; or
 - The percentage of inlet management funding requests from local sponsors as a proportion of the total amount of statewide beach management dollars requested in a given year;
 - Include inlet monitoring activities ranked on the inlet management project list as one aggregated subcategory on the overall inlet management project list; and
 - Update and maintain an annual report on its website concerning the extent to which each inlet project has succeeded in balancing the sediment budget of the inlet and adjacent beaches and in mitigating the inlet's erosive effects on adjacent beaches. The report must provide an estimate of the quantity of sediment bypasses, transferred, or otherwise placed on adjacent eroding beaches, or in such beaches' nearshore area, for the purpose of offsetting the erosive effects of inlets on the beaches of this state.

Strategic Beach Management Plan

Section 4 amends s. 161.161, F.S., to require the DEP in developing and maintaining the Strategic Beach Management Plan (SBMP) to:

- Include recommendations for improvement of infrastructure to facilitate sand bypassing to mitigate the erosive impact of an inlet that causes beach erosion;
- Consider the establishment of regional sediment management alternatives for one or more individual beach and inlet sand bypassing projects as an alternative to beach restoration when appropriate and cost-effective, and recommend the location of such regional sediment management alternatives and the source of beach-compatible sand;
- In addition to identifying shoreline erosion and change, determine erosion rates, and maintain an updated list of critically eroded sandy beaches based on data, analyses, and investigations of shoreline conditions;
- In addition to studying dune and vegetation conditions, identify existing beach projects without dune features or with dunes without adequate elevations, and encourage dune restoration and revegetation to be incorporated as part of storm damage recovery projects or future dune maintenance events;
- Document procedures and policies for preparing post-storm damage assessments and corresponding recovery plans, including repair cost estimates; and
- Identify and assess appropriate management measures for all of the state's critically eroded sandy beaches.

Section 4 removes the requirement that the DEP, in developing and maintaining the SBMP:

- Include cost estimates necessary to take inlet corrective measures and recommendations regarding cost sharing among the beneficiaries of such inlet;
- Evaluate the establishment of feeder beaches as an alternative to direct beach restoration and recommend the location of such feeder beaches;
- Project long-term erosion for all major beach and dune systems by surveys and profiles;
- Identify shoreline development and degree of density;
- In identifying short-and long-term economic costs and benefits of beaches, include recreational value to user groups, tax base, revenues generated, and beach acquisition and maintenance costs;
- Identify alternative management responses to prevent inappropriate development and redevelopment on migrating beaches;
- Consider abandonment as an alternative management response;
- Establish criteria, including costs and specific implementation actions, for alternative management techniques; and
- Submit regional plans on a set schedule and in accordance with certain requirements.

Section 4 authorizes the DEP to hold a public meeting in the region for which the plan is prepared, through a publicly noticed webinar. The bill requires the comprehensive long-term management plan to include, at a minimum, a strategic beach management plan, a critically eroded beaches report, and a statewide long range budget plan.

Long range budget plan

The DEP is required to provide a long range budget plan that includes at least five years of planned beach nourishment and inlet management project funding needs as identified, and subsequently refined, by local government sponsors. The plan is required to consist of a three-year work plan and a long-range plan that identifies projects for inclusion in the fourth and fifth ensuing years.

The long range budget plan must include a three-year work plan for beach restoration, beach nourishment and inlet management projects. The three-year work plan is required to list planned projects for each of the three fiscal years addressed in the work plan. The three-year work plan must:

- Identify beach restoration, beach nourishment and inlet management projects viable for implementation during the next three ensuing fiscal years, as determined by available cost-sharing, local sponsor support, regulatory considerations, and the ability of the project to proceed as scheduled;
- For year fiscal year, identify proposed projects and their current development status, listing them in priority order based on the applicable criteria; and
- Be accompanied by a three-year financial forecast for the availability of funding for the projects based on funds dedicated through the Land Acquisition Trust Fund.

Section 4 authorizes specific funding requests and criteria ranking to be modified as warranted in each successive fiscal year, provided that such modifications are documented and submitted to the Legislature with each three-year work plan. Year One projects consist of projects identified for funding consideration in the ensuing fiscal year.

Projects for consideration in the Fourth and Fifth ensuing years may be presented by region and do not need to be presented by priority order. However, the DEP is required to identify issues that may prevent successful completion of such projects and recommend solutions that would allow the projects to progress into the three-year work plan.

Section 4 also requires the DEP to present the three-year work plan to the Legislature each year.

Land Acquisition Trust Fund

Section 5 amends s. 375.041, F.S., to require an annual appropriation from the Land Acquisition Trust Fund in the amount of a minimum of the lesser of 7.6 percent of the funds remaining after the payment of debt service or \$50 million. Such funds are required to be appropriated annually for projects that preserve and repair the state's beaches.

Section 5 also requires that the amount of the distribution to be calculated to be reduced by an amount equal to the debt service paid on bonds issues for projects that preserve or repair the state's beaches issued after July 1, 2016.

Except for section 1 and section 4 of the bill, which take effect July 1, 2018, the bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will have a positive, indeterminate fiscal impact to local governments that receive funding for beach nourishment. The bill has a negative, recurring appropriation to the Land Acquisition Trust Fund (LATF), which requires the minimum of the lesser of 7.6 percent of the remainder of funds after the payment of debt service within the LATF or \$50 million. However, some of the costs may be offset depending on the return on investment the state receives related to beach restoration and nourishment projects.

VI. Technical Deficiencies:

If the intent of this legislation is to establish a continuing appropriation of \$50 million annually, without further legislative action in subsequent fiscal years, the language “shall be appropriated annually” should be clarified to read, “is appropriated annually.”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 161.101, 161.143, 161.161, and 375.041.

IX. Additional Information:

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

CS/CS by Appropriations on April 20, 2017:

The committee substitute clarifies that beach restoration projects are included in developing and maintaining the Strategic Beach Management Plan.

CS by Environmental Preservation and Conservation on March 22, 2017:

CS/SB 1590 pushes back the effective date for the amendment to s. 161.101(14), F.S., relating to the scoring system for beach management project funding and s. 161.161, F.S., relating to the procedure for the approval of projects for beach and inlet management.

- B. **Amendments:**

None.

By the Committee on Environmental Preservation and Conservation;
and Senators Latvala, Hutson, and Mayfield

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1 A bill to be entitled
2 An act relating to coastal management; amending s.
3 161.101, F.S.; revising the criteria to be considered
4 by the Department of Environmental Protection in
5 determining and assigning annual funding priorities
6 for beach management and erosion control projects;
7 specifying tiers for such criteria; requiring tiers to
8 be given certain weight; requiring the department to
9 update active project lists on its website; redefining
10 the term "significant change"; revising the
11 department's reporting requirements; specifying
12 allowable uses for certain surplus funds; revising the
13 requirements for a specified summary; requiring that
14 funding for certain projects remain available for a
15 specified period; amending s. 161.143, F.S.;

16 specifying the scope of certain projects; revising the
17 list of projects that are included as inlet management
18 projects; requiring that certain projects be
19 considered separate and apart from other specified
20 projects; revising the ranking criteria to be used by
21 the department to establish certain funding priorities
22 for certain inlet-caused beach erosion projects;
23 revising provisions authorizing the department to
24 spend certain appropriated funds for the management of
25 inlets; deleting a provision authorizing the
26 department to spend certain appropriated funds for
27 specified inlet studies; revising the required
28 elements of the department's report of prioritized
29 inlet management projects; revising the funds that the

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30 department must make available to certain inlet
31 management projects; requiring the department to
32 include specified activities on the inlet management
33 project list; deleting provisions requiring the
34 department to make available funding for specified
35 projects; deleting a requirement that the Legislature
36 designate a project as an Inlet of the Year; requiring
37 the department to update and maintain a report
38 regarding the progress of certain inlet management
39 projects; revising the requirements for the report;
40 deleting certain temporary provisions relating to
41 specified appropriations; amending s. 161.161, F.S.;

42 revising requirements for the comprehensive long-term
43 management plan; requiring the plan to include a
44 strategic beach management plan, a critically eroded
45 beaches report, and a statewide long-range budget
46 plan; providing for the development and maintenance of
47 such plans; deleting a requirement that the department
48 submit a certain beach management plan on a certain
49 date each year; requiring the department to hold a
50 public meeting before finalization of the strategic
51 beach management plan; requiring the department to
52 submit a 3-year work plan and a related forecast for
53 the availability of funding to the Legislature;
54 amending s. 375.041, F.S.; requiring certain funds
55 from the Land Acquisition Trust Fund to be used for
56 projects that preserve and repair state beaches;
57 providing effective dates.

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

60
61 Section 1. Effective July 1, 2018, subsection (14) of
62 section 161.101, Florida Statutes, is amended to read:

63 161.101 State and local participation in authorized
64 projects and studies relating to beach management and erosion
65 control.—

66 (14) The intent of the Legislature in preserving and
67 protecting Florida's sandy beaches pursuant to this act is to
68 direct beach erosion control appropriations to the state's most
69 severely eroded beaches, and to prevent further adverse impact
70 caused by improved, modified, or altered inlets, coastal
71 armoring, or existing upland development. In establishing annual
72 project funding priorities, the department shall seek formal
73 input from local coastal governments, beach and general
74 government interest groups, and university experts. The
75 department shall adopt by rule a scoring system to determine
76 annual project funding priorities. The scoring system must
77 consist of the following criteria equally weighted within the
78 following specified tiers ~~criteria to be considered by the~~
79 ~~department in determining annual funding priorities shall~~
80 ~~include:~~

81 (a) Tier 1 must account for 20 percent of the total score
82 and consist of the tourism-related return on investment and the
83 severity of erosion conditions, the threat to existing upland
84 development, and recreational and/or economic impact of the
85 project. The return on investment of the project is the ratio of
86 the tourism-related tax revenues for the most recent year to the
87 amount of state funding requested for the proposed project. The

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88 economic impact of the project is the ratio of the tourism-
89 related tax revenues for the most recent year to all county tax
90 revenues for the most recent year. The department must calculate
91 these ratios using state sales tax and tourism development tax
92 data of the county having jurisdiction over the project area. If
93 multiple counties have jurisdiction over the project area, the
94 department must assess each county individually using these
95 ratios. The department shall calculate the mean average of these
96 ratios to determine the final overall assessment for the
97 multicounty project benefits.

98 (b) Tier 2 must account for 45 percent of the total score
99 and consist of the following criteria:

100 1. The availability of federal matching dollars,
101 considering federal authorization, the federal cost-share
102 percentage, and the status of the funding award;—

103 2. The storm damage reduction benefits of the project based
104 on the following considerations:

105 a. The current conditions of the project area, including
106 any recent storm damage impact, as a percentage of volume of
107 sand lost since the most recent beach nourishment event or most
108 recent beach surveys. If the project area has not been
109 previously restored, the department must use the historical
110 background erosion rate;

111 b. The overall potential threat to existing upland
112 development, including public and private structures and
113 infrastructure, based on the percentage of vulnerable shoreline
114 within the project boundaries; and

115 c. The value of upland property benefiting from the
116 protection provided by the project and its subsequent

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117 maintenance. A property must be within one-quarter mile of the
 118 project boundaries to be considered under the criterion
 119 specified in this subparagraph; and
 120 3. The cost-effectiveness of the project based on the
 121 yearly cost per volume per mile of proposed beach fill
 122 placement. The department shall also consider the following when
 123 assessing cost-effectiveness pursuant to this subparagraph:
 124 a. The existence of projects with proposed structural or
 125 design components to extend the beach nourishment interval;
 126 b. Existing beach nourishment projects that reduce upland
 127 storm damage costs by incorporating new or enhanced dune
 128 structures or new or existing dune restoration and revegetation
 129 projects;
 130 c. Proposed innovative technologies designed to reduce
 131 project costs; and
 132 d. Regional sediment management strategies and coordination
 133 to conserve sand source resources and reduce project costs.
 134 (c) Tier 3 must account for 20 percent of the total score
 135 and consist of the following criteria: ~~The extent of local~~
 136 ~~government sponsor financial and administrative commitment to~~
 137 ~~the project, including a long-term financial plan with a~~
 138 ~~designated funding source or sources for initial construction~~
 139 ~~and periodic maintenance.~~
 140 1.~~(d)~~ Previous state commitment and involvement in the
 141 project, considering previously funded phases, the total amount
 142 of previous state funding, and previous partial appropriations
 143 for the proposed project;
 144 2. The recreational benefits of the project based on:
 145 a. The accessible beach area added by the project; and

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146 b. The percentage of linear footage within the project
 147 boundaries that is zoned:
 148 (I) As recreational or open space;
 149 (II) For commercial use; or
 150 (III) To otherwise allow for public lodging
 151 establishments;-
 152 ~~(e) The anticipated physical performance of the proposed~~
 153 ~~project, including the frequency of periodic planned~~
 154 ~~nourishment.~~
 155 3.~~(f)~~ The extent to which the ~~proposed~~ project mitigates
 156 the adverse impact of improved, modified, or altered inlets on
 157 adjacent beaches; and-
 158 ~~(g) Innovative, cost effective, and environmentally~~
 159 ~~sensitive applications to reduce erosion.~~
 160 ~~(h) Projects that provide enhanced habitat within or~~
 161 ~~adjacent to designated refuges of nesting sea turtles.~~
 162 ~~(i) The extent to which local or regional sponsors of beach~~
 163 ~~erosion control projects agree to coordinate the planning,~~
 164 ~~design, and construction of their projects to take advantage of~~
 165 ~~identifiable cost savings.~~
 166 4.~~(j)~~ The degree to which the project addresses the state's
 167 most significant beach erosion problems based on the ratio of
 168 the linear footage of the project shoreline to the cubic yards
 169 of sand placed per mile per year.
 170 (d) Tier 4 must account for 15 percent of the total score
 171 and consist of the following criteria:
 172 1. Increased prioritization of projects that have been on
 173 the department's ranked project list for successive years and
 174 that have not previously secured state funding for project

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175 implementation;

176 2. Environmental habitat enhancement, recognizing state or
 177 federal critical habitat areas for threatened or endangered
 178 species which may be subject to extensive shoreline armoring or
 179 recognizing areas where extensive shoreline armoring threatens
 180 the availability or quality of habitat for such species. Turtle-
 181 friendly designs, dune and vegetation projects for areas with
 182 redesigned or reduced fill templates, proposed incorporation of
 183 best management practices and adaptive management strategies to
 184 protect resources, and innovative technologies designed to
 185 benefit critical habitat preservation may also be considered;
 186 and

187 3. The overall readiness of the project to proceed in a
 188 timely manner considering the project's readiness for the
 189 construction phase of development, the status of required
 190 permits, the status of any needed easement acquisition, the
 191 availability of local funding sources, and the establishment of
 192 an erosion control line. If the department identifies specific
 193 reasonable and documented concerns that the project will not
 194 proceed in a timely manner, the department may choose not to
 195 include the project in the annual funding priorities submitted
 196 to the Legislature.

197
 198 ~~If in the event that~~ more than one project qualifies equally
 199 under the provisions of this subsection, the department shall
 200 assign funding priority to those projects shown to be most ~~that~~
 201 ~~are~~ ready to proceed.

202 Section 2. Subsection (20) of section 161.101, Florida
 203 Statutes, is amended to read:

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204 161.101 State and local participation in authorized
 205 projects and studies relating to beach management and erosion
 206 control.—

207 (20) The department shall maintain active project lists,
 208 updated at least quarterly, ~~listings~~ on its website by fiscal
 209 year in order to provide transparency regarding those projects
 210 receiving funding and the funding amounts, and to facilitate
 211 legislative reporting and oversight. In consideration of this
 212 intent:

213 (a) The department shall notify the Executive Office of the
 214 Governor and the Legislature regarding any significant changes
 215 in the funding levels of a given project as initially requested
 216 in the department's budget submission and subsequently included
 217 in approved annual funding allocations. The term "significant
 218 change" means a project-specific change or cumulative changes
 219 that exceed the project's original allocation by \$500,000 or
 220 that exceed ~~those changes exceeding~~ 25 percent of the a
 221 project's original allocation.

222 1. Except as provided in subparagraph 2., if there is
 223 surplus funding, the department must provide a notification and
 224 supporting justification ~~shall be provided~~ to the Executive
 225 Office of the Governor and the Legislature to indicate whether
 226 surplus ~~additional~~ dollars are intended to be used for inlet
 227 management projects pursuant to s. 161.143 or for beach
 228 restoration and beach nourishment projects, offered for
 229 reversion as part of the next appropriations process, or used
 230 for other specified priority projects on active project lists.

231 2. For surplus funds for projects that do not have a
 232 significant change, the department may use such funds for the

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233 same purposes identified in subparagraph 1. The department shall
 234 post the uses of such funds on the project listing web page of
 235 its website. No other notice or supporting justification is
 236 required before the use of surplus funds for a project that does
 237 not have a significant change.

238 (b) The department shall prepare a summary of specific
 239 project activities for the current fiscal year, their funding
 240 status, and changes to annual project lists for the current and
 241 preceding fiscal year. shall be prepared by The department shall
 242 include the summary and included with the department's
 243 submission of its annual legislative budget request.

244 (c) Funding for specific projects on annual project lists
 245 approved by the Legislature must remain available for such
 246 projects for 18 months. A local project sponsor may at any time
 247 release, in whole or in part, appropriated project dollars by
 248 formal notification to the department. The department, which
 249 shall notify the Executive Office of the Governor and the
 250 Legislature of such release and. Notification must indicate in
 251 the notification how the project dollars are recommended
 252 intended to be used after such release.

253 Section 3. Subsections (2) through (5) of section 161.143,
 254 Florida Statutes, are amended to read:

255 161.143 Inlet management; planning, prioritizing, funding,
 256 approving, and implementing projects.-

257 (2) The department shall establish annual funding
 258 priorities for studies, activities, or other projects concerning
 259 inlet management. Such inlet management projects constitute the
 260 intended scope of this section and s. 161.142 and consist of
 261 include, but are not limited to, inlet sand bypassing,

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262 improvement of infrastructure to facilitate sand bypassing,
 263 modifications to channel dredging, jetty redesign, jetty repair,
 264 disposal of spoil material, and the development, revision,
 265 adoption, or implementation of an inlet management plan.
 266 Projects considered for funding pursuant to this section shall
 267 be considered separate and apart from projects reviewed and
 268 prioritized in s. 161.101(14). The funding priorities
 269 established by the department under this section must be
 270 consistent with the requirements and legislative declaration in
 271 ss. 161.101(14), 161.142, and 161.161(1)(b). In establishing
 272 funding priorities under this subsection and before transmitting
 273 the annual inlet project list to the Legislature under
 274 subsection (4) ~~(5)~~, the department shall seek formal input from
 275 local coastal governments, beach and general government
 276 associations and other coastal interest groups, and university
 277 experts concerning annual funding priorities for inlet
 278 management projects. In order to maximize the benefits of
 279 efforts to address the inlet-caused beach erosion problems of
 280 this state, the ranking criteria used by the department to
 281 establish funding priorities for studies, activities, or other
 282 projects concerning inlet management must include equal
 283 consideration of:

284 (a) An estimate of the annual quantity of beach-quality
 285 sand reaching the updrift boundary of the improved jetty or
 286 inlet channel.

287 (b) The severity of the erosion to the adjacent beaches
 288 caused by the inlet ~~and the extent to which the proposed project~~
 289 ~~mitigates the erosive effects of the inlet.~~

290 (c) The overall significance and anticipated success of the

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291 proposed project in mitigating the erosive effects of the inlet,
 292 balancing the sediment budget of the inlet and adjacent beaches,
 293 and addressing the sand deficit along the inlet-affected
 294 shorelines.

295 (d) The extent to which ~~existing~~ bypassing activities at an
 296 inlet would benefit from modest, cost-effective improvements
 297 when considering the volumetric increases from the proposed
 298 project, the availability of beach-quality sand currently not
 299 being bypassed to adjacent eroding beaches, and the ease with
 300 which such beach-quality sand may be obtained.

301 (e) The cost-effectiveness of sand made available by a
 302 proposed inlet management project or activity relative to other
 303 sand source opportunities that would be used to address inlet-
 304 caused beach erosion ~~The interest and commitment of local~~
 305 ~~governments as demonstrated by their willingness to coordinate~~
 306 ~~the planning, design, construction, and maintenance of an inlet~~
 307 ~~management project and their financial plan for funding the~~
 308 ~~local cost share for initial construction, ongoing sand~~
 309 ~~bypassing, channel dredging, and maintenance.~~

310 (f) The existence of a proposed or recently updated ~~The~~
 311 ~~previous completion or approval of a state-sponsored inlet~~
 312 ~~management plan or a local-government-sponsored inlet study~~
 313 ~~addressing concerning the inlet addressed by the proposed~~
 314 ~~project, the ease of updating and revising any such plan or~~
 315 ~~study, and the adequacy and specificity of the plan's or study's~~
 316 ~~recommendations concerning the mitigation of an inlet's erosive~~
 317 ~~effects on adjacent beaches.~~

318 (g) The degree to which the proposed project will enhance
 319 the performance and longevity of proximate beach nourishment

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320 projects, thereby reducing the frequency of such periodic
 321 nourishment projects.

322 (h) The project-ranking criteria in s. 161.101(14) to the
 323 extent such criteria are applicable to inlet management studies,
 324 projects, and activities and are distinct from, and not
 325 duplicative of, the criteria listed in paragraphs (a)-(g).

326 (3) The department may pay from legislative appropriations
 327 up to 75 percent of the construction costs of an initial major
 328 inlet management project component for the purpose of mitigating
 329 the erosive effects of the inlet to the shoreline and balancing
 330 the sediment budget. The remaining balance of such construction
 331 costs must be paid from other funding sources, such as local
 332 sponsors. All project costs not associated with an initial major
 333 inlet management project component must be shared equally by
 334 state and local sponsors in accordance with, pursuant to s.
 335 161.101 and notwithstanding s. 161.101(15), pay from legislative
 336 appropriations provided for these purposes 75 percent of the
 337 total costs, or, if applicable, the nonfederal costs, of a
 338 study, activity, or other project concerning the management of
 339 an inlet. The balance must be paid by the local governments or
 340 special districts having jurisdiction over the property where
 341 the inlet is located.

342 ~~(4) Using the legislative appropriation to the statewide~~
 343 ~~beach-management-support category of the department's fixed~~
 344 ~~capital outlay funding request, the department may employ~~
 345 ~~university-based or other contractual sources and pay 100~~
 346 ~~percent of the costs of studies that are consistent with the~~
 347 ~~legislative declaration in s. 161.142 and that:~~

348 ~~(a) Determine, calculate, refine, and achieve general~~

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349 consensus regarding net annual sediment transport volumes to be
 350 used for the purpose of planning and prioritizing inlet
 351 management projects; and

352 ~~(b) Appropriate, assign, and apportion responsibilities~~
 353 ~~between inlet beneficiaries for the erosion caused by a~~
 354 ~~particular inlet on adjacent beaches.~~

355 (4)(5) The department shall annually provide an inlet
 356 management project list, in priority order, to the Legislature
 357 as part of the department's budget request. ~~The list must~~
 358 ~~include studies, projects, or other activities that address the~~
 359 ~~management of at least 10 separate inlets and that are ranked~~
 360 ~~according to the criteria established under subsection (2).~~

361 (a) The department shall designate for make available at
 362 least 10 percent of the total amount that the Legislature
 363 appropriates in each fiscal year for statewide beach management
 364 for the three highest-ranked projects on the current year's
 365 inlet management project list, in priority order, an amount that
 366 is at least equal to the greater of:

367 1. Ten percent of the total amount that the Legislature
 368 appropriates in the fiscal year for statewide beach management;
 369 or

370 2. The percentage of inlet management funding requests from
 371 local sponsors as a proportion of the total amount of statewide
 372 beach management dollars requested in a given year.

373 (b) The department shall include inlet monitoring
 374 activities ranked on the inlet management project list as one
 375 aggregated subcategory on the overall inlet management project
 376 list make available at least 50 percent of the funds
 377 appropriated for the feasibility and design category in the

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378 department's fixed capital outlay funding request for projects
 379 on the current year's inlet management project list which
 380 involve the study for, or design or development of, an inlet
 381 management project.

382 ~~(c) The department shall make available all statewide beach~~
 383 ~~management funds that remain unencumbered or are allocated to~~
 384 ~~non-project-specific activities for projects on legislatively~~
 385 ~~approved inlet management project lists. Funding for local-~~
 386 ~~government-specific projects on annual project lists approved by~~
 387 ~~the Legislature must remain available for such purposes for a~~
 388 ~~period of 18 months pursuant to s. 216.301(2)(a). Based on an~~
 389 ~~assessment and the department's determination that a project~~
 390 ~~will not be ready to proceed during this 18 month period, such~~
 391 ~~funds shall be used for inlet management projects on~~
 392 ~~legislatively approved lists.~~

393 (5)(d) The Legislature shall designate one of the three
 394 highest projects on the inlet management project list in any
 395 year as the Inlet of the Year. The department shall update and
 396 maintain an annual annually report on its website to the
 397 Legislature concerning the extent to which each inlet project
 398 designated by the Legislature as Inlet of the Year has succeeded
 399 in balancing the sediment budget of the inlet and adjacent
 400 beaches and in, mitigating the inlet's erosive effects on
 401 adjacent beaches. The report must provide an estimate of the
 402 quantity of sediment bypassed, transferred, and transferring or
 403 otherwise placed placing beach-quality sand on adjacent eroding
 404 beaches, or in such beaches' nearshore area, for the purpose of
 405 offsetting the erosive effects of inlets on the beaches of this
 406 state.

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407 ~~(e) Notwithstanding paragraphs (a) and (b), and for the~~
 408 ~~2016-2017 fiscal year only, the amount allocated for inlet~~
 409 ~~management funding is provided in the 2016-2017 General~~
 410 ~~Appropriations Act. This paragraph expires July 1, 2017.~~

411 Section 4. Effective July 1, 2018, subsections (1) and (2)
 412 of section 161.161, Florida Statutes, are amended, and present
 413 subsections (3) through (7) are redesignated as subsections (4)
 414 through (8), respectively, to read:

415 161.161 Procedure for approval of projects.-

416 (1) The department shall develop and maintain a
 417 comprehensive long-term beach management plan for the
 418 restoration and maintenance of the state's critically eroded
 419 beaches fronting the Atlantic Ocean, Gulf of Mexico, and Straits
 420 of Florida. In developing and maintaining this the beach
 421 management plan, the department shall:

422 (a) Address long-term solutions to the problem of
 423 critically eroded beaches in this state.

424 (b) Evaluate each improved, modified, or altered inlet and
 425 determine whether the inlet is a significant cause of beach
 426 erosion. With respect to each inlet determined to be a
 427 significant cause of beach erosion, the plan shall include+

428 ~~±~~ the extent to which such inlet causes beach erosion and
 429 recommendations to mitigate the erosive impact of the inlet,
 430 including, but not limited to, ~~recommendations regarding inlet~~
 431 sediment bypassing; improvement of infrastructure to facilitate
 432 sand bypassing; modifications to channel dredging, jetty design,
 433 and disposal of spoil material; establishment of feeder beaches;
 434 and beach restoration and beach nourishment; and

435 ~~2. Cost estimates necessary to take inlet corrective~~

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436 ~~measures and recommendations regarding cost sharing among the~~
 437 ~~beneficiaries of such inlet.~~

438 (c) Evaluate Design criteria for beach restoration and
 439 beach nourishment projects, including, but not limited to, ~~±~~

440 ~~±~~ dune elevation and width and revegetation and

441 stabilization requirements, ~~±~~ and

442 ~~2-~~ beach profiles profile.

443 (d) Consider Evaluate the establishment of regional
 444 sediment management alternatives for one or more individual
 445 beach and inlet sand bypassing projects feeder beaches as an
 446 alternative to ~~direct~~ beach restoration when appropriate and
 447 cost-effective, and recommend the location of such regional
 448 sediment management alternatives feeder beaches and the source
 449 of beach-compatible sand.

450 (e) Identify causes of shoreline erosion and change,
 451 determine calculate erosion rates, and maintain an updated list
 452 of critically eroded sandy beaches based on data, analyses, and
 453 investigations of shoreline conditions and project long-term
 454 erosion for all major beach and dune systems by surveys and
 455 profiles.

456 (f) ~~Identify shoreline development and degree of density~~
 457 ~~and Assess impacts of development and~~ coastal protection
 458 ~~shoreline protective structures on shoreline change and erosion.~~

459 (g) Identify short-term and long-term economic costs and
 460 benefits of beaches to the state of Florida and individual beach
 461 communities, including recreational value to user groups, tax
 462 base, revenues generated, and beach acquisition and maintenance
 463 costs.

464 (h) Study dune and vegetation conditions, identify existing

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465 beach nourishment projects without dune features or with dunes
 466 without adequate elevations, and encourage dune restoration and
 467 revegetation to be incorporated as part of storm damage recovery
 468 projects or future dune maintenance events.

469 (i) Identify beach areas used by marine turtles and develop
 470 strategies for protection of the turtles and their nests and
 471 nesting locations.

472 (j) Identify alternative management responses to preserve
 473 undeveloped beach and dune systems and, to restore damaged beach
 474 and dune systems. In identifying such management responses, the
 475 department shall consider, at a minimum, and to prevent
 476 inappropriate development and redevelopment on migrating
 477 beaches, and consider beach restoration and nourishment,
 478 armoring, relocation and abandonment, dune and vegetation
 479 restoration, and acquisition.

480 (k) Document procedures and policies for preparing post-
 481 storm damage assessments and corresponding recovery plans,
 482 including repair cost estimates. Establish criteria, including
 483 costs and specific implementation actions, for alternative
 484 management techniques.

485 (l) Identify and assess ~~Select and recommend~~ appropriate
 486 management measures for all of the state's critically eroded
 487 sandy beaches in a beach management program.

488 ~~(m) Establish a list of beach restoration and beach~~
 489 ~~nourishment projects, arranged in order of priority, and the~~
 490 ~~funding levels needed for such projects.~~

491 (2) The comprehensive long-term management plan developed
 492 and maintained by the department pursuant to subsection (1) must
 493 include, at a minimum, a strategic beach management plan, a

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494 critically eroded beaches report, and a statewide long-range
 495 budget plan. The long-range budget plan must include a 3-year
 496 work plan for beach nourishment projects and inlet management
 497 projects that lists planned projects for each of the 3 fiscal
 498 years addressed in the work plan.

499 (a) The strategic beach management plan must identify and
 500 recommend appropriate measures for all of the state's critically
 501 eroded sandy beaches and may incorporate plans be prepared at
 502 the regional level taking into account based upon areas of
 503 greatest need and probable federal and local funding. Upon
 504 approval in accordance with chapter 86-138, Laws of Florida,
 505 such regional plans, along with the 3-year work plan identified
 506 in subparagraph (c)1., shall be components of the statewide
 507 beach management plan and shall serve as the basis for state
 508 funding decisions upon approval in accordance with chapter 86-
 509 138, Laws of Florida. In accordance with a schedule established
 510 for the submission of regional plans by the department, any
 511 completed plan must be submitted to the secretary of the
 512 department for approval no later than March 1 of each year.
 513 These regional plans shall include, but shall not be limited to,
 514 recommendations of appropriate funding mechanisms for
 515 implementing projects in the beach management plan, giving
 516 consideration to the use of single county and multicounty taxing
 517 districts or other revenue generation measures by state and
 518 local governments and the private sector. Prior to finalizing
 519 the strategic beach management presenting the plan to the
 520 secretary of the department, the department shall hold a public
 521 meeting in the region areas for which the plan is prepared or
 522 through a publicly noticed webinar. The plan submission schedule

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523 shall be submitted to the secretary for approval. Any revisions
524 to such schedule must be approved in like manner.

525 (b) The critically eroded beaches report must be developed
526 and maintained based primarily on the requirements specified in
527 paragraph (1) (e).

528 (c) The statewide long-range budget plan must include at
529 least 5 years of planned beach nourishment and inlet management
530 project funding needs as identified, and subsequently refined,
531 by local government sponsors. This plan shall consist of two
532 components:

533 1. A 3-year work plan that identifies beach nourishment and
534 inlet management projects viable for implementation during the
535 next 3 ensuing fiscal years, as determined by available cost-
536 sharing, local sponsor support, regulatory considerations, and
537 the ability of the project to proceed as scheduled. The 3-year
538 work plan must, for each fiscal year, identify proposed projects
539 and their current development status, listing them in priority
540 order based on the applicable criteria established in ss.
541 161.101(14) and 161.143(2). Specific funding requests and
542 criteria ranking, pursuant to ss. 161.101(14) and 161.143(2),
543 may be modified as warranted in each successive fiscal year, and
544 such modifications must be documented and submitted to the
545 Legislature with each 3-year work plan. Year one projects shall
546 consist of those projects identified for funding consideration
547 in the ensuing fiscal year.

548 2. A long-range plan that identifies projects for inclusion
549 in the fourth and fifth ensuing fiscal years. These projects may
550 be presented by region and do not need to be presented in
551 priority order; however, the department should identify issues

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552 that may prevent successful completion of such projects and
553 recommend solutions that would allow the projects to progress
554 into the 3-year work plan.

555 ~~(3)(2) Annually,~~ The secretary shall annually present the
556 3-year work plan to the Legislature. The work plan must be
557 accompanied by a 3-year financial forecast for the availability
558 of funding for the projects, based on funds dedicated in s.
559 375.041 ~~recommendations for funding beach erosion control~~
560 ~~projects prioritized according to the criteria established in s.~~
561 ~~161.101(14).~~

562 Section 5. Paragraph (b) of subsection (3) of section
563 375.041, Florida Statutes, is amended to read:

564 375.041 Land Acquisition Trust Fund.—

565 (3) Funds distributed into the Land Acquisition Trust Fund
566 pursuant to s. 201.15 shall be applied:

567 (b) Of the funds remaining after the payments required
568 under paragraph (a), but before funds may be appropriated,
569 pledged, or dedicated for other uses:

570 1. A minimum of the lesser of 25 percent or \$200 million
571 shall be appropriated annually for Everglades projects that
572 implement the Comprehensive Everglades Restoration Plan as set
573 forth in s. 373.470, including the Central Everglades Planning
574 Project subject to Congressional authorization; the Long-Term
575 Plan as defined in s. 373.4592(2); and the Northern Everglades
576 and Estuaries Protection Program as set forth in s. 373.4595.
577 From these funds, \$32 million shall be distributed each fiscal
578 year through the 2023-2024 fiscal year to the South Florida
579 Water Management District for the Long-Term Plan as defined in
580 s. 373.4592(2). After deducting the \$32 million distributed

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581 under this subparagraph, from the funds remaining, a minimum of
 582 the lesser of 76.5 percent or \$100 million shall be appropriated
 583 each fiscal year through the 2025-2026 fiscal year for the
 584 planning, design, engineering, and construction of the
 585 Comprehensive Everglades Restoration Plan as set forth in s.
 586 373.470, including the Central Everglades Planning Project
 587 subject to Congressional authorization. The Department of
 588 Environmental Protection and the South Florida Water Management
 589 District shall give preference to those Everglades restoration
 590 projects that reduce harmful discharges of water from Lake
 591 Okeechobee to the St. Lucie or Caloosahatchee estuaries in a
 592 timely manner. For the purpose of performing the calculation
 593 provided in this subparagraph, the amount of debt service paid
 594 pursuant to paragraph (a) for bonds issued after July 1, 2016,
 595 for the purposes set forth under paragraph (b) shall be added to
 596 the amount remaining after the payments required under paragraph
 597 (a). The amount of the distribution calculated shall then be
 598 reduced by an amount equal to the debt service paid pursuant to
 599 paragraph (a) on bonds issued after July 1, 2016, for the
 600 purposes set forth under this subparagraph.

601 2. A minimum of the lesser of 7.6 percent or \$50 million
 602 shall be appropriated annually for spring restoration,
 603 protection, and management projects. For the purpose of
 604 performing the calculation provided in this subparagraph, the
 605 amount of debt service paid pursuant to paragraph (a) for bonds
 606 issued after July 1, 2016, for the purposes set forth under
 607 paragraph (b) shall be added to the amount remaining after the
 608 payments required under paragraph (a). The amount of the
 609 distribution calculated shall then be reduced by an amount equal

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610 to the debt service paid pursuant to paragraph (a) on bonds
 611 issued after July 1, 2016, for the purposes set forth under this
 612 subparagraph.

613 3. The sum of \$5 million shall be appropriated annually
 614 each fiscal year through the 2025-2026 fiscal year to the St.
 615 Johns River Water Management District for projects dedicated to
 616 the restoration of Lake Apopka. This distribution shall be
 617 reduced by an amount equal to the debt service paid pursuant to
 618 paragraph (a) on bonds issued after July 1, 2016, for the
 619 purposes set forth in this subparagraph.

620 4. A minimum of the lesser of 7.6 percent or \$50 million
 621 shall be appropriated annually for projects that preserve and
 622 repair the state's beaches as provided in s. 161.091(3). The
 623 calculation provided in this subparagraph shall be performed
 624 using the same formula as described in subparagraph 2.

625 Section 6. Except as otherwise provided in this act, this
 626 act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/2017
Meeting Date

SB 1590
Bill Number (if applicable)

Topic Coastal Management

Amendment Barcode (if applicable)

Name Eddy Labrador

Job Title Director, Intergovt. Affairs

Address 115 S. Andrews Avenue, Room 426

Phone 954-826-1155

Street

Fort Lauderdale

FL

33301

City

State

Zip

Email elabrador@broward.org

Speaking: For Against Information

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

Representing Broward 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)

20 MAR 17
Meeting Date

SB 1590
Bill Number (if applicable)

Topic COASTAL MANAGEMENT

Amendment Barcode (if applicable)

Name RICHARD TURNER

Job Title GEN COUNSEL : V.P. GOVERNMENTAL RELATIONS

Address 230 S. ADAMS ST
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TALLAHASSEE FL 32301
City State Zip

Email rturner@fla.gov

Speaking: For Against Information

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

Representing FLORIDA RESTAURANT & LODGING 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.

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THE FLORIDA SENATE
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4/20/17
Meeting Date

1590
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Diana Ferguson

Job Title Attorney

Address 119 S Monroe St Ste 202

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elexia.com

Speaking: For Against Information

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

Representing Miami-Dade 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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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April 20
Meeting Date

1590
Bill Number (if applicable)

Topic Coastal Management

Amendment Barcode (if applicable)

Name Deborah Flack

Job Title President

Address 1961 Chatsworth
Street

Phone 850 510-5409

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing FL SHORE & BEACH PRESERVATION

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

4/20/17
Meeting Date

1590
Bill Number (if applicable)

Topic Beaches

Amendment Barcode (if applicable)

Name Andrew Rutledge

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Phone —

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City

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State

32308

Zip

Email —

Speaking: For Against Information

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

Representing Florida Realtors

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)

4/20/17
Meeting Date

1590
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Nicole Fogarty

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Email fogarty@stlucieco

Speaking: For Against Information

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

Representing St. Lucie County Board of County Commissioners

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)

4/20/17
Meeting Date

1590
Bill Number (if applicable)

Topic coastal management

Amendment Barcode (if applicable)

Name Susan Harbin

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City State Zip

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Speaking: For Against Information

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

Representing Florida 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/20/17
Meeting Date

1590
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Devon West

Job Title Legislative Affairs Director

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City

FL
State

34996
Zip

Email dwest@martinfl.us

Speaking: For Against Information

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

Representing Martin County Board of County Commissioners

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)

4/20/17

1590

Meeting Date

Bill Number (if applicable)

Topic

COASTAL MANAGEMENT

Amendment Barcode (if applicable)

Name

LISA HURLEY

Job Title

Address

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850.724.5081

Street

TANAHSEE FL 32301

Email

lhurley@smithbryanand
nagers.com

City

State

Zip

Speaking:

For

Against

Information

* Waive Speaking:

In Support

Against

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

Representing

FLAGLER 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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 1600

INTRODUCER: Appropriations Committee; Banking and Insurance Committee; and Senators Young and Broxson

SUBJECT: Viatical Settlement Contracts

DATE: April 24, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1600 makes stranger-originated life insurance (STOLI) contracts void and unenforceable and allows a life insurer to contest a policy obtained through a STOLI practice, notwithstanding that life insurance contracts cannot be contested two years after issuance. A stranger-originated life insurance practice is an act, practice, arrangement or agreement to initiate a life insurance policy for the benefit of a third party investor who has no insurable interest in the insured at policy origination.

The bill makes void and unenforceable viatical settlement contracts subject to a loan secured by an interest in the insurance policy within five years from the issuance of the underlying insurance policy. This is referred to as the contestability period of the viatical settlement contract. The bill otherwise retains the existing two year contestability period under current law. Current law provides conditions that, if met, allow the execution of a viatical settlement contract during the contestability period. The bill modifies the process for doing so. The viator must provide a sworn affidavit and accompanying independent evidentiary documentation to a viatical settlement provider certifying that the viator has met a statutory exception that allows viatication of a policy during the contestability period. Current law does not require the viator to execute a sworn affidavit with documentation evidencing that the exception applies. The bill also revises and clarifies some of the conditions that allow viatication during the contestability period.

The bill adds as prohibited practices under the Viatical Settlement Act:

- Engaging in a fraudulent viatical settlement act;
- Engaging in a STOLI practice;
- Knowingly entering into a viatical settlement contract before the application for or issuance of a life insurance policy that is the subject of the viatical settlement contract or within a contestability period unless the viator complied with s. 626.99287, F.S.; and
- Knowingly issuing, soliciting, marketing, or promoting the purchase of a life insurance policy for the purpose of, or with an emphasis on selling the property to a third party.

Violations are third-degree felonies if the insurance policy has a value less than \$20,000; second-degree felonies if the insurance policy has a value of \$20,000 or more but less than \$100,000; and first-degree felonies if the insurance policy has a value of \$100,000 or more.

The bill does not affect state revenues or expenditures.¹

The bill takes effect upon becoming law.

II. Present Situation:

Life Insurance – Insurable Interests

Life insurance allows an individual to set aside money in the present (through the payment of premiums) to provide some measure of financial security for his or her surviving beneficiaries upon his or her premature death. The proceeds allow survivors to pay off debts and other expenses and provide a source of income to replace that lost by the death of the insured.² A fundamental concept in life insurance is that the purchaser and beneficiary of an insurance policy must have an insurable interest—a reasonable expectation of a monetary benefit from the continued well-being of the life insured. In the context of life insurance, the insurable interest³ prevents purchasing insurance as a form of gambling on the death of the insured, which creates a moral hazard for the purchaser who may be tempted to create a situation where he or she will be able to collect on the policy.

Florida law prohibits the procurement of “an insurance contract on the life or body of another individual unless the insurance contract benefits are payable to the insured, his or her personal representatives, or a person having an insurable interest in the insured when the contract was made.”⁴ Persons with insurable interest include the insured, family members and loved ones of the insured, others if the insured’s life and health is of greatest benefit to them, trusts and trustees in specified circumstances, charitable organizations, and business organizations in specified circumstances.⁵

¹ Office of Insurance Regulation, *Senate Bill 1600 Fiscal Analysis* (March 31, 2017) (on file with the Senate Appropriations Committee).

² Office of Insurance Regulation, *Life Insurance*, <http://www.floir.com/Sections/LandH/Life/default.aspx> (last visited April 14, 2017).

³ Section 627.404, F.S., lists nine exclusive categories in which an “insurable interest” as to life, health or disability insurance are recognized.

⁴ The insurable interest need not exist after the inception date of coverage under the contract. *See* s. 627.404(1), F.S.

⁵ Section 627.404(2)(b), F.S.

Viatical Settlement Contracts - Background

A viatical settlement contract is a written agreement entered into between the owner⁶ of a life insurance policy, referred to as the viator, and a viatical settlement provider wherein the viator agrees to transfer ownership or change the beneficiary designation of a life insurance policy at a later date in exchange for compensation paid to the viator.⁷ The compensation paid to the viator is generally less than the expected death benefit under the policy. Rather than retaining the policy, the provider usually sells all or part of the policy to one or more investors. In return for providing funds, these investors receive the death benefit, or a proportionate share thereof, upon the passing of the insured.

Viatical settlements emerged during the HIV/AIDS epidemic in the 1980s, enabling terminally ill patients with short life expectancies who could no longer work and afford the policy premiums to sell their life insurance policies at a cash discount to pay for high medical care expenses. In the early days of the epidemic, AIDS patients generally died within months of their diagnoses, resulting in fairly quick, significant returns to investors,⁸ who in those days were typically senior individuals who risked their savings in what was represented as a safe investment and marketed as a compassionate way to help dying patients. However, innovations in AIDS treatment in the early 1990s significantly improved life expectancies of AIDS patients, sometimes even outliving their investors, which disrupted mortality assumptions and diminished investor returns.

Two consequences resulted from the insureds of viaticated policies exceeding their life expectancy. The first is that some viatical settlement providers stopped brokering new viatical settlements. The second, unfortunately, is that some viatical settlement providers engaged in fraudulent practices.⁹

An example cited by the Office of Insurance Regulation (OIR) of such fraudulent activity was Mutual Benefits Corporation (MBC).¹⁰ In 2004, the OIR suspended MBC's license and the United States Securities and Exchange Commission (SEC) filed an action in federal court seeking an injunction and the appointment of a receiver. The court-appointed receiver reported that MBC had fraudulently procured insurance policies with a total face value of approximately \$1.4 billion. The SEC agreed to a \$25 million settlement and referred the case to prosecutors. Federal prosecutors charged former company employees, most of whom pled guilty and were sentenced to lengthy prison terms. A factual statement filed by an MBC employee described the scheme. Mutual Benefits Corporation would falsely promise investors a fixed rate of return but was unable to keep those promises because insureds lived longer than expected and their premiums had to be paid to keep the underlying policies in force. New investor sales were used to continue to pay premiums on the previously viaticated life insurance policies. The MBC experience and other fraudulent schemes led to the Legislature comprehensively reforming the regulation of the viatical settlement industry in 2005.

⁶ Or certificateholder if a group policy.

⁷ Section 626.9911, F.S.

⁸ Kelly J. Bozanic, *An Investment to Die For: From Life Insurance to Death Bonds, the Evolution and Legality of the Life Settlement Industry*, 113 PENN. ST. L. REV. 229, 233-234 (2008).

⁹ Office of Insurance Regulation, *Secondary Life Insurance Market Report to the Florida Legislature* (Dec. 2013), p. 9.

¹⁰ See Office of Insurance Regulation, *supra* note 5, at pg. 10.

Today, the viatical settlement market is not limited to the purchase of the life insurance products of the terminally ill. Viatical settlement contracts are also entered into with non-terminally ill insureds that no longer want, need, or can afford their policies. These agreements, often referred to as life settlements, serve as an alternative to exercising a redemption or accelerated death benefit clause in life insurance policies.

Because investors' expectations of returns can trigger the application of state and federal securities law, viatical settlements are widely treated as a hybrid transaction implicating both insurance law and securities law. Insurance law applies to protect the policy owner or viator in the "front-end" transaction with the viatical settlement provider through licensing, disclosure reporting, and other requirements. On the other hand, securities law applies to the "back-end" transaction to protect investors in viatical settlement investments by state securities regulators, and in some circumstances, the U.S. Securities and Exchange Commission.¹¹

In response to increasing concerns over consumer protection in the viatical settlement market, several state insurance regulators, through the National Association of Insurance Commissioners (NAIC), and the National Association of Insurance Legislators (NCOIL)¹² developed model state legislation regulating the "front-end" transaction of viatical settlements in 1993 and 2007, respectively.

Regulation of the Viatical Settlement Industry

Viatical settlement providers and viatical settlement brokers are required to obtain licensure from the OIR. The Viatical Settlement Act (Act)¹³ sets forth requirements for licensure, annual reporting, disclosures to viators, transactional procedures, adoption of anti-fraud plans, and administrative, civil, and criminal penalties. The Act also provides the OIR with examination and enforcement authority over viatical service providers and brokers; review and approval authority over the viatical settlement contracts and forms; rulemaking authority; and provided that a violation of the Act is an unfair trade practice under the Insurance Code. The Act does not authorize the OIR to regulate the rate or amount paid as consideration for a viatical settlement contract.¹⁴

In 2005, legislation was enacted that requires the investment transaction to be regulated as a security under ch. 517, F.S. These investments must be registered with either the OFR or the SEC. In addition, persons offering such investments must obtain licensure from the OFR and provide full and fair disclosures concerning viatical settlement investments to prospective investors. The 2005 legislation also provides that a person or firm who offers or attempts to negotiate a viatical settlement between an insured (viator) and a viatical service provider for compensation is a *viatical settlement broker* who must be licensed with the Department of

¹¹ GOVERNMENT ACCOUNTABILITY OFFICE, *Report to the Special Committee on Aging, U.S. Senate: Life Insurance Settlements*, GAO-10-775 (Jul. 2010), p. 9, at <http://www.gao.gov/assets/310/306966.pdf> (last visited April 14, 2017).

¹² The NAIC is the standard-setting and regulatory support organization created and governed by the chief insurance departments that regulate the conduct and solvency of insurers in their respective states or territories. NAIC, *About the NAIC*, http://www.naic.org/index_about.htm (last visited April 14, 2017).

¹³ Ch. 96-336, Laws of Fla.

¹⁴ Section 626.9926, F.S.

Financial Services (DFS) as a life insurance agent with a proper appointment from a viatical service provider. Viatical settlement brokers owe a fiduciary duty to the viator.¹⁵

In 2013, the Legislature directed the OIR to review Florida law and regulations to determine whether there were adequate protections for purchasers of life insurance policies in the secondary life insurance market.¹⁶ Following a public hearing conducted by the OIR, in which both life insurers and institutional investors participated, the OIR published a report, concluding that adequate protections for institutional purchasers in the secondary life insurance market existed and that their recommendations did not warrant legislative action at the time.¹⁷

Stranger-Originated Life Insurance

Stranger-originated life insurance (STOLI) is somewhat similar to a viatical transaction, but with the key difference that the individual who obtains a life insurance policy does so for the express purpose of assigning the policy in exchange for compensation. In a typical STOLI transaction, an individual (usually a senior) is encouraged to take out insurance on his or her own life, sometimes in the millions of dollars. The individual then assigns the policy to an investor or group of investors (the “stranger”) who pay the individual a large cash settlement in exchange for the ownership rights to the policy, including the right to receive the proceeds upon the insured’s death.

STOLI also differs from legitimate viatical settlements with the following common characteristics:

- Typically targets senior citizens who are induced with gifts, promises of free insurance, or monetary gain;
- Commonly financed through non-recourse “premium finance loans”;
- Commonly structured through the use of an irrevocable trust, making it difficult for the life insurance company to know that the policy has been sold;
- Premiums are paid for two years (i.e., the contestable period); and
- Often involves misrepresentation, falsification, or omission of material facts (also known as “cleansheeting”) in the life insurance application and inflated underwriting practices, such as the applicant’s net worth, in order to obtain a policy with a high face value.

As the Uniform Law Commission noted:

Those who benefit from STOLI transactions (typically investors in the secondary markets) claim that it is an appropriate use of life insurance consistent with applicable legal principles, including the free transferability of assets. Others, including life insurers, oppose the use of STOLI on the ground that it is a perversion of the life insurance asset and

¹⁵ Sections 626.9911(9) and 626.9916, F.S.

¹⁶ Ch. 2013-40, s. 6, Laws of Fla. (2013 General Appropriations Act, p. 316).

¹⁷ See Office of Insurance Regulation, *supra* fn. 5, pp. 50-51.

leads to the moral hazard concerns that insurable interest doctrines were intended to mitigate.¹⁸

Stranger-originated life insurance may appear similar to a viatical or life settlement. The critical difference is that in viatical or life settlements, an insured initially buys life insurance in a good-faith intent to protect valid insurable interests (i.e., to protect family members or a business from the risk of a premature death). The individual subsequently decides to sell the policy to a third party due to a change in circumstances that may not warrant the policy (such as divorce, death of an intended beneficiary, or the need for immediate cash due to illness or other loss). In a STOLI, the policy is intentionally purchased for the benefit of persons (usually investors) who lack an insurable interest at the time the life insurance contract is entered into. These investors ultimately receive the proceeds, directly or indirectly.¹⁹ The Uniform Law Commission has noted that the beneficiaries of STOLI transactions argue that it is an appropriate use of life insurance consistent with applicable legal principles, including the free transferability of assets. Life insurers oppose the use of STOLI, arguing that it is a perversion of the concept of life insurance and leads to the moral hazard concerns that insurable interest doctrines are intended to mitigate.²⁰

Transactions involving STOLI often use fraudulent means to procure life insurance on individuals, such as misrepresentation, falsification, or omission of material facts in the life insurance application. The fraud is conducted so that an assignment or sale of a policy functions as a subterfuge that circumvents the insurable interest requirement. STOLI transactions generally target senior citizens and are often financed through non-recourse “premium finance loans.” It is common for STOLI to be structured through the use of an irrevocable trust, which conceals from the life insurance company that the policy was sold. The insured pays premiums during the contestable period to prevent the insurer from discovering a possible violation of the insurable interest requirement.

According to the OIR, STOLI impacts consumers (both individual investors and insureds) and insurers in a number of ways:²¹

- Seniors may exhaust their life insurance purchasing capability and not be able to protect their own family or business.
- The incentives, especially cash payments, used to lure seniors to participate in STOLI schemes are taxable as ordinary income.
- Seniors may subject themselves or their estates to potential liability in the event the life insurance policy is rescinded by an insurer who discovers fraud.

¹⁸ UNIFORM LAW COMMISSION, *Insurable Interest Amendment to the Uniform Trust Code Summary*, at <http://uniformlaws.org/ActSummary.aspx?title=Insurable%20Interest%20Amendment%20to%20the%20Uniform%20Trust%20Code> (last visited April 13, 2017).

¹⁹ AALU, NAIFA, and ACLI, *STOLI: The Problem and the Appropriate State Response*, p. 4, (on file with the Senate Committee on Banking and Insurance).

²⁰ UNIFORM LAW COMMISSION, *Insurable Interest Amendment to the Uniform Trust Code Summary*, at <http://uniformlaws.org/ActSummary.aspx?title=Insurable%20Interest%20Amendment%20to%20the%20Uniform%20Trust%20Code> (last visited March 22, 2017).

²¹ Office of Insurance Regulation (OIR), *2017 Agency Legislative Bill Analysis of HB 1205*, pg. 5 (March 12, 2017). Additionally, s. 626.9923, F.S., requires viatical service providers to disclose certain risks to viators, such as tax and Medicaid eligibility consequences.

- Seniors may encounter unexpected tax liability from the sale of the life insurance policy.²²
- The “free” insurance is not free and may be subject to tax based on the economic value of the coverage.
- Seniors have to give the purchaser, and subsequent purchasers, access to their medical records when they sell their life insurance policy in the secondary market so that investors know the health status of the insured. The investors want to know the “status” of their investment and how close they are to getting paid.
- STOLI may lead to an increase in life insurance rates for the over-65 population.
- If STOLI practices continue to proliferate, the U.S. Congress may remove the tax-free status of life insurance proceeds.

Over 30 states currently prohibit STOLI, generally through some combination of the National Association of Insurance Commissioners (NAIC) and National Conference of Insurance Legislators (NCOIL) model acts, in addition to common law or statutory insurable interest laws. STOLI has resulted in significant litigation, criminal and regulatory enforcement actions, both nationally²³ and in Florida.²⁴

The OIR may use several legal, criminal or regulatory remedies to address STOLI transactions:

- *The Viatical Settlement Act* authorizes the OIR to impose fines of up to \$2,500 for nonwillful violations and up to \$10,000 for willful violations, or to suspend, revoke, deny, or refuse to renew the license of any viatical settlement provider found to be engaging in certain acts, such as fraudulent or dishonest practices, dealing in bad faith with viators, or violating any provision of the Act or the Insurance Code. The OIR may also impose cease and desist orders and immediate final orders for violations of the Act.²⁵
- *Misrepresentation on an application*: Currently, s. 627.409, F.S., provides that misrepresentation, omission, concealment of fact, or incorrect statements on an application for an insurance contract “may prevent recovery” in certain cases. However, this remedy is viewed as inadequate, because there are no criminal penalties and the only civil penalty available is an action for rescission by the life insurer.
- *Agent regulation*: Various provisions of the Insurance Code authorize the DFS to suspend or revoke the license or appointment of licensees, agencies, or appointees on various grounds, such as using fraudulent or dishonest practices in the conduct of business under the license.²⁶
- *Unfair Insurance Trade Practices Act*: Part IX of ch. 626, F.S., contains a number of unfair insurance trade practices. In particular, s. 626.9541, F.S., lists several unfair methods of competition and unfair or deceptive acts or practices. Each violation of this statute can result in fines ranging from \$5,000 to \$75,000, depending on the willfulness and particular

²² See IRS Rev. Ruls. 2009-13 and 2009-14, regarding taxation of proceeds from settlements as capital gains ordinary income and taxation on a post-settlement basis.

²³ OIR, *STOLI Criminal Cases Against Agents May Be on Upswing*, <http://www.florid.com/siteDocuments/ACLI17Feb28STOLICriminalCasesAgainstAgentsMayBeUpswing.pdf> (February 28, 2012) (last visited April 14, 2017).

²⁴ For a listing of OIR enforcement actions, see OIR, *Viatical Criminal, Civil and Regulatory Actions*, http://www.florid.com/sections/landh/viaticals/ccr_actions.aspx (last visited April 14, 2017) and 2013 OIR Report, *Appendix C: Florida Regulatory and Enforcement Actions Pertaining to Viatical Settlement Providers*.

²⁵ Sections 626.9914 and 626.99272, F.S.

²⁶ Sections 626.611, 626.6115, 626.6215, and 626.621, F.S.

violation. In addition, “twisting”²⁷ and “churning”²⁸ are first-degree misdemeanors, while willfully submitting false signatures on an application is a third-degree felony.²⁹ While viatical settlement providers (VSP) are subject to s. 626.9541, F.S., by way of s. 626.9927, F.S., and STOLI transactions do share some components of these practices, the statute was written for the initial sale of an insurance policy to an insured, thereby making it difficult to apply the statute to secondary sales of life insurance policies.³⁰

- *Insurable Interest Litigation by Life Insurers*: Insurers and investors have relied on two dueling statutes that are not in the Act.
 - As noted above, Florida expanded its insurable interest statute, s. 627.404, F.S., in 2008 to clarify when an insurable interest may be validly recognized for life insurance purposes. Life insurers have relied on this statute in filing suit to rescind the policies subsequently transferred in a STOLI transaction for a lack of insurable interest at the time of the policy.
 - However, another statute, s. 627.455, F.S., requires insurers to include an incontestability clause in their policies that bars a challenge to the policy after it has been in force for two years. Securities intermediaries (acting for the institutional investors) have relied on this statute as a kind of statute of limitations to seek dismissal of insurers’ rescission cases, arguing that a tardy challenge is barred regardless whether the policy was made with an insurable interest at inception.
 - In separate cases, the U.S. District Court for the Southern District of Florida reached different interpretations on the interplay of these statutes.³¹ These appeals were consolidated to the U.S. Court of Appeals for the Eleventh Circuit (Eleventh Circuit). The Eleventh Circuit noted that there are no cases decided by Florida courts that specifically addressed whether a party can challenge an insurance policy as being void ab initio [to be treated as invalid from the beginning]³² for lack of an insurable interest if the challenge is made after the two-year contestability period, and if so, whether the individual with the required insurable interest must procure the policy in good faith. As a result, the Eleventh

²⁷ As defined in s. 626.9541(1)(l), F.S., “twisting” means “knowingly making any misleading representations or incomplete or fraudulent comparisons or fraudulent material omissions of or with respect to any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance in another insurer.”

²⁸ “Churning” by an insurer or an agent is an unfair method of competition and an unfair or deceptive act or practice. As defined in s. 626.9541(1)(aa), F.S., “churning” is: the practice whereby policy values in an existing life insurance policy or annuity contract, including, but not limited to, cash, loan values, or dividend values, and in any riders to that policy or contract, are directly or indirectly used to purchase another insurance policy or annuity contract with that same insurer for the purpose of earning additional premiums, fees, commissions, or other compensation:

- a. Without an objectively reasonable basis for believing that the replacement or extraction will result in an actual and demonstrable benefit to the policyholder;
- b. In a fashion that is fraudulent, deceptive, or otherwise misleading or that involves a deceptive omission;
- c. When the applicant is not informed that the policy values including cash values, dividends, and other assets of the existing policy or contract will be reduced, forfeited, or used in the purchase of the replacing or additional policy or contract, if this is the case; or
- d. Without informing the applicant that the replacing or additional policy or contract will not be a paid-up policy or that additional premiums will be due, if this is the case.

²⁹ Section 626.9541, F.S.

³⁰ OIR Agency Analysis, *supra* note 24, at 2.

³¹ *Pruco Life Ins. v. Brasner*, 2011 WL 134056 (S.D. Fla. Jan. 7, 2011), and *Pruco Life Ins. Co. v. U.S. Bank*, 2013 WL 4496506 (S.D. Fla. Aug. 20, 2013).

³² BLACKS LAW DICTIONARY, <http://thelawdictionary.org/article/ab-initio-big-deal-contract-law/> (last visited April 13, 2017).

- Circuit certified questions to the Florida Supreme Court for a determination of Florida law on the conflict between these two statutes.³³
- In September 2016, the Florida Supreme Court considered the Eleventh Circuit’s certified questions and concluded that “[b]ecause the STOLI policies like the . . . policies at issue have the insurable interest required by section 627.404(1) at their inception, they become incontestable two years after their issuance under the plain language of section 627.455.”³⁴ The Florida Supreme Court rephrased the certified question and answered the following in the negative: “Can a party challenge the validity of a life insurance policy after the two-year contestability period established by section 627.455 because of its creation through a STOLI scheme?”³⁵ Answering in the affirmative would essentially create a STOLI-policy exception to the two-year contestability period in s. 627.455, F.S. The Florida Supreme Court noted that, “[w]hile such an exception might be wise public policy, that decision is for the Florida Legislature, not this Court.”³⁶

Currently, s. 627.409, F.S., provides that misrepresentation, omission, concealment of fact, or incorrect statements on an application for an insurance contract “may prevent recovery” in certain cases, however, there are no criminal penalties and an action for rescission by the life insurer is the only civil penalty available. Various provisions of the Insurance Code authorize the DFS to suspend or revoke the license or appointment of licensees, agencies, or appointees on various grounds, such as using fraudulent or dishonest practices in the conduct of business under the license.³⁷ Finally, the Unfair Insurance Trade Practices Act in s. 626.9541, F.S., lists several unfair methods of competition and unfair or deceptive acts or practices. Each violation of this statute can result in fines ranging from \$5,000 to \$75,000, depending on the willfulness and particular violation. In addition, “twisting” and “churning” are first-degree misdemeanors, while willfully submitting false signatures on an application is a third-degree felony.³⁸

Current law does not specifically define STOLI, nor does it have a specific regulatory prohibition on STOLI or life insurance policies lacking an insurable interest at inception. Life insurers engage in insurable interest litigation to combat STOLI, usually relying on the insurable interest statute in s. 627.404, F.S., to rescind the policies transferred in a STOLI transaction for a lack of insurable interest when the policy was initially entered into. This argument is sometimes opposed with arguments seeking the application of the incontestability statute, s. 627.455, F.S., which requires life insurance policies to include a provision barring the insurer from challenging the policy after it is in force for two years.

In *Wells Fargo Bank, N.A. v. Pruco Life Insurance Company*, the Florida Supreme Court addressed whether a party can challenge the validity of a life insurance policy after the two-year contestability period established by s. 627.455, F.S., because of its creation through a STOLI scheme.³⁹ The court ruled that if a STOLI policy has the insurable interest required by

³³ *Pruco Life Ins. Co. v. Wells Fargo Bank, N.A.*, 780 F.3d 1327 at 1336 (11th Cir. C.A. 2015).

³⁴ *Wells Fargo Bank, N.A. v. Pruco Life Ins. Co.*, 200 So. 3d 1202, 1206 (Fla. 2016). The appeal will go back to the Eleventh Circuit for final disposition.

³⁵ *Id.* at 1206-07.

³⁶ *Id.* at 1203.

³⁷ Sections 626.611, 626.6115, 626.6215, and 626.621, F.S.

³⁸ Section 626.9541, F.S.

³⁹ *Wells Fargo Bank, N.A. v. Pruco Life Insurance Company*, No. SC15-382 (Fla. September 22, 2016).

s. 627.404(1), F.S., at its inception, the policy becomes incontestable two years after it is issued under s. 627.455, F.S.⁴⁰ Thus, even if the insurable interest is created as the result of a STOLI scheme, the policy is incontestable after two years.

III. Effect of Proposed Changes:

Defining a “Fraudulent Viatical Settlement Act” and a “Stranger-originated Life Insurance Practice”

Section 1 creates two new subsections in s. 626.9911, F.S. The new subsection (2) defines “fraudulent viatical settlement acts” as an act or omission committed by a person who knowingly, or with intent for the purpose of depriving another of property or for pecuniary gain, commits or allows an employee or agent to commit any of the following:

- Presenting, causing to be presented, or preparing false or concealed material information concerning specified material facts, such as:
 - An application for the issuance of a viatical settlement contract or a life insurance policy;
 - The underwriting of a viatical settlement contract or a life insurance policy;
 - Premiums paid on a life insurance policy;
 - Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or a life insurance policy;
 - The reinstatement or conversion of a life insurance policy;
 - The solicitation, offer, effectuation, or sale of a viatical settlement contract or a life insurance policy;
 - The issuance of written evidence of a viatical settlement contract or a life insurance policy; or
 - A financing transaction for a viatical settlement contract or life insurance policy.
- Employing a plan, financial structure, device, scheme or artifice related to viaticated policies for the purpose of perpetrating fraud;
- Engaging in a stranger-originated life insurance practice;
- Failing to disclose, upon request by an insurer, that the prospective insured has undergone a life expectancy evaluation by a person other than the insurer or its authorized representatives in connection with the issuance of the life insurance policy;
- Perpetuating a fraud or preventing its detection;⁴¹
- Embezzling, stealing, or misappropriating funds or other property of an insurance policyholder, insured, insurer, viator, viatical settlement provider, or any person engaged in the business of viatical settlement contracts or life insurance;
- Entering into, negotiating, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained on false or concealed information to defraud the policy’s issuer, a viatical settlement provider, or a viator;
- Facilitating the viator’s change of state to avoid the provisions of this act;

⁴⁰ See *id* at pgs. 9-10.

⁴¹ Such acts include removing, concealing, altering, destroying, or sequestering from the OIR the assets or records of a licensee or other person engaged in viatical settlements; misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person; transacting business relating to viatical settlement contracts in violation of the Viatical Settlement Act; and filing with the OIR or the insurance regulator in another jurisdiction false information or concealing information about a material fact.

- Facilitating or causing the creation of a trust with a non-Florida or other nonresident entity for the purpose of owning a life insurance policy covering a Florida resident to avoid the provisions of this act;
- Applying for or obtaining a loan that is secured directly or indirectly by an interest in a life insurance policy with intent to defraud, for the purpose of depriving another of property, or for pecuniary gain; and
- Attempting to commit, assisting, aiding, abetting, or conspiring to commit an act or omission that meets the definition of a “fraudulent viatical settlement act.”

Subsection (9) is created for the purpose of defining a “stranger-originated life insurance practice.” It is an act, practice, arrangement or agreement to initiate a life insurance policy for the benefit of a third party investor who has no insurable interest in the insured at policy origination.⁴²

Contestability Periods for Viaticated Policies and Stranger-Originated Life Insurance

Section 2 amends s. 626.9924, F.S., to require the viatical settlement provider to give the documents required under s. 626.99287, F.S., to the life insurer that issued a life insurance policy within 20 days of an agreement to viaticate the policy during the five-year contestability period. The documents must accompany the notice required under current law. The required documents support the affidavit executed by the viator that an exception applies allowing the creation of a viatical settlement contract within five years after the issuance of the viaticated insurance policy.

Section 5 amends s. 626.99287, F.S., and makes void and unenforceable viatical settlement contracts entered into within five years from the issuance of the underlying insurance policy if the policy is subject to a loan secured directly or indirectly by an interest with the policy. This is the contestability period of the viatical settlement contract. The bill otherwise retains the two-year contestability period for viatical settlement contracts under current law.

Current law provides conditions that, if met, allow the execution of a viatical settlement contract during the contestability period. This section modifies the process for doing so. The viator must provide a sworn affidavit and accompanying independent evidentiary documentation to a viatical settlement provider certifying that the viator has met a statutory exception that allows viatication of a policy during the contestability period. Current law does not require the viator to execute a sworn affidavit with documentation evidencing that the exception applied.

This section revises two of the conditions allowing viatication during the contestability period. Currently, the limitation on viaticating a policy does not apply the life insurance policy was issued upon the owner’s exercise of conversion rights arising out of a group or term policy. The bill limits this condition by requiring that the policy has been in effect for at least 60 months.⁴³

⁴² The bill states that stranger-originated life insurance practices include the purchase of a life insurance policy with resources or guarantees from or through a person who, at the time of the policy’s inception, is not lawfully able to execute an arrangement or agreement to transfer the ownership or benefits of the policy to a third party. It also includes creating a trust or other entity that has the appearance of an insurable interest in order to initiate policies for investors, in violation of insurable interest laws and the prohibition against wagering on life.

⁴³ The 60-month period is calculated without regard to any change in insurance carriers if coverage has been continuous and under the same group sponsorship.

This section clarifies the exception for insureds or viators with illnesses by requiring them to provide evidence of a “terminal” or “chronic” illness, terms that are more precise in meaning than the current law. Current law refers to an illness that is catastrophic, life threatening, or requires at least three years of long-term care or home health care.

The bill allows the viator to enter into a viatical settlement contract more than two years after the policy’s issuance date if at all times prior to two-years after policy issuance, the viator met three conditions. The viator must continuously fund the policy premiums exclusively with the viator’s unencumbered assets.⁴⁴ There must not be an agreement or understanding with another person to guarantee any liabilities related to the policy or to purchase the policy. Neither the insured nor policy were evaluated for settlement.

Section 7 creates s. 626.99291, F.S., to allow a life insurer to contest a life insurance policy that was obtained by a STOLI practice, notwithstanding s. 627.455, F.S., which provides that life insurance and annuity contracts are not to be contestable for the initial two years.

Prohibiting Fraudulent Viatical Settlement Acts and Stranger Originated Life Insurance (Sections 4 and 6)

Section 4 amends s. 626.99275(1), F.S., to add to the list of prohibited practices:

- Knowingly entering into a viatical settlement contract before the application for or issuance of a life insurance policy that is the subject of the viatical settlement contract or during the two-year contestability period specified in s. 626.99287(1) or the five-year contestability period specified in s. 626.99287(2), F.S., unless the viator provides a sworn affidavit and accompanying evidence pursuant to.;
- Engaging in a fraudulent viatical settlement act, as defined in s. 626.9911, F.S.;
- Knowingly issuing, soliciting, marketing, or promoting the purchase of a life insurance policy for the purpose of, or with an emphasis on selling the property to a third party; and
- Engaging in a stranger-originated life insurance practice, as defined in s. 626.9911, F.S.

The prohibited practices are subject to criminal penalties, which remain unchanged. Violations are third-degree felonies if the insurance policy has a value less than \$20,000; second-degree felonies if the insurance policy has a value of \$20,000 or more but less than \$100,000; and first-degree felonies if the insurance policy has a value of \$100,000 or more.⁴⁵

Section 6 creates s. 626.99289, F.S., to make void and unenforceable any contract or agreement entered into for the furtherance or aid of a STOLI practice.

Notice to Insureds

Section 8 creates s. 626.99292, F.S., to require a life insurer to provide an individual life insurance policyholder with a statement informing him or her that a policyholder considering changes in the status of a policy should consult with a licensed insurance or financial advisor. The statement must also advise the policyholder that he or she may contact the Office of

⁴⁴ May include the net surrender value of the life insurance policy being financed.

⁴⁵ Section 626.99275(2), F.S.

Insurance Regulation (OIR) for more information and include a website address or other manner by which the policyholder may contact the OIR. The statement may accompany or be included in notices or mailings otherwise provided to the policyholder.

Miscellaneous Provisions (Sections 3 and 8)

Section 3 amends s. 626.99245, F.S., to correct a cross reference. This section provides viatical settlement providers doing business from this state must obtain a viatical settlement license from the OIR. The term “doing business from this state” within this subsection, includes effectuating viatical settlement agreements from offices in this state, regardless of the state of residence of the viator.

Section 9 provides that the act is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Policyholders, particularly senior adults, will benefit from the prevention fraudulent viatical settlement acts and STOLI practices that deprive them of property or are created for the pecuniary gain of the party that becomes the new beneficiary or owner of the underlying life insurance policy.

C. Government Sector Impact:

The bill does not have an impact on state revenues or expenditures.

VI. Technical Deficiencies:

Section 1 of the bill defines “fraudulent viatical settlement acts” as various actions done by a person “knowingly, or with intent to defraud for the purpose of depriving another of property or

for pecuniary gain.” On lines 116-119 the prohibition against “applying for or obtaining a loan that is secured directly or indirectly by an interest in a life insurance policy” needlessly duplicates the clause “with intent to defraud, for the purpose of depriving another of property, or for pecuniary gain.” The redundant language on lines 118-119 is unnecessary.

Section 8 of the bill requires insurers to provide a notice to policyholders considering making changes in the status of a life insurance policy. On line 314, it requires the notice to include information for contacting the Office of Insurance Regulation. It may be more appropriate for the notice to include information on how to contact the Division of Consumer Services at the Department of Financial Services.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.9911, 626.9924, 626.99245, 626.99275, and 626.99287.

This bill creates the following sections of the Florida Statutes: 626.99289, 626.99291, and 626.99292.

IX. Additional Information:

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

CS/CS by Appropriations on April 20, 2017:

Deletes a bill provision that would have created a default five-year contestability period; the current two-year contestability period is instead retained with exceptions created by the bill. Requires insurers to notify individual life insurance policyholders that they should consult with licensed insurance or financial advisors if considering a change in the status of a life insurance policy.

CS by Banking and Insurance on March 27, 2017:

Defines a stranger-originated life insurance practice in s. 626.9911, F.S. Specifies that a life insurer may contest a life insurance policy obtained by a STOLI practice, notwithstanding that life insurance contracts are incontestable two years after issuance.

- B. **Amendments:**

None.



164220

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Young) recommended the following:

Senate Amendment

Delete line 109
and insert:
policy with intent to defraud, for the purpose of depriving
another of property or for pecuniary gain.



885964

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Young) recommended the following:

Senate Amendment

Delete lines 177 - 179
and insert:
during an applicable period specified in s. 626.99287(1) or (2),
unless the viator provides a sworn affidavit and accompanying
independent evidentiary documentation in accordance with s.



549508

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Young) recommended the following:

Senate Amendment (with title amendment)

Delete lines 190 - 256

and insert:

626.99287 Contestability of viaticated policies.-

(1) Except as hereinafter provided, if a viatical settlement contract is entered into within the 2-year period commencing with the date of issuance of the insurance policy or certificate to be acquired, the viatical settlement contract is void and unenforceable by either party.



549508

11 (2) Except as hereinafter provided, if a viatical
12 settlement policy is subject to a loan secured directly or
13 indirectly by an interest in the policy within a 5-year period
14 commencing on the date of issuance of the policy or certificate,
15 the viatical settlement contract is void and unenforceable by
16 either party.

17 (3) Notwithstanding the limitations in subsections (1) and
18 (2) ~~this limitation~~, such a viatical settlement contract is not
19 void and unenforceable if the viator provides a sworn affidavit
20 and accompanying independent evidentiary documentation
21 certifying to the viatical settlement provider that one or more
22 of the following conditions were met during the periods
23 applicable to the viaticated policy as stated in subsections (1)
24 or (2):

25 (a) ~~(1)~~ The policy was issued upon the owner's exercise of
26 conversion rights arising out of a group or term policy, if the
27 total time covered under the prior policy is at least 60 months.
28 The time covered under a group policy must be calculated without
29 regard to any change in insurance carriers, provided the
30 coverage has been continuous and under the same group
31 sponsorship.

32 (b) ~~(2)~~ The owner of the policy is a charitable organization
33 exempt from taxation under 26 U.S.C. s. 501(c)(3).

34 ~~(3) The owner of the policy is not a natural person;~~

35 ~~(4) The viatical settlement contract was entered into~~
36 ~~before July 1, 2000;~~

37 (c) ~~(5)~~ The viator certifies by producing independent
38 evidence to the viatical settlement provider that one or more of
39 the following conditions were ~~have been~~ met ~~within the 2-year~~



549508

40 ~~period:~~

41 ~~(a)1. The viator or insured is terminally or chronically~~
42 ~~ill diagnosed with an illness or condition that is either:~~

43 ~~a. Catastrophic or life threatening; or~~

44 ~~b. Requires a course of treatment for a period of at least~~
45 ~~3 years of long-term care or home health care; and~~

46 ~~2. the condition was not known to the insured at the time~~
47 ~~the life insurance contract was entered into;:-~~

48 ~~2.(b) The viator's spouse dies;~~

49 ~~3.(e) The viator divorces his or her spouse;~~

50 ~~4.(d) The viator retires from full-time employment;~~

51 ~~5.(e) The viator becomes physically or mentally disabled~~
52 ~~and a physician determines that the disability prevents the~~
53 ~~viator from maintaining full-time employment;~~

54 ~~6.(f) The owner of the policy was the insured's employer at~~
55 ~~the time the policy or certificate was issued and the employment~~
56 ~~relationship terminated;~~

57 ~~7.(g) A final order, judgment, or decree is entered by a~~
58 ~~court of competent jurisdiction, on the application of a~~
59 ~~creditor of the viator, adjudicating the viator bankrupt or~~
60 ~~insolvent, or approving a petition seeking reorganization of the~~
61 ~~viator or appointing a receiver, trustee, or liquidator to all~~
62 ~~or a substantial part of the viator's assets; or~~

63 ~~8.(h) The viator experiences a significant decrease in~~
64 ~~income which is unexpected by the viator and which impairs his~~
65 ~~or her reasonable ability to pay the policy premium.~~

66 ~~(d) The viator entered into a viatical settlement contract~~
67 ~~more than 2 years after the policy's issuance date and, with~~
68 ~~respect to the policy, at all times before the date that is 2~~



549508

69 years after policy issuance, each of the following conditions is
70 met:

71 1. Policy premiums have been funded exclusively with
72 unencumbered assets, including an interest in the life insurance
73 policy being financed only to the extent of its net cash
74 surrender value, provided by, or fully recourse liability
75 incurred by, the insured;

76 2. There is no agreement or understanding with any other
77 person to guarantee any such liability or to purchase, or stand
78 ready to purchase, the policy, including through an assumption
79 or forgiveness of the loan; and

80 3. Neither the insured or the policy has been evaluated for
81 settlement.

82
83 ===== T I T L E A M E N D M E N T =====

84 And the title is amended as follows:

85 Delete lines 11 - 15

86 and insert:

87 F.S.; providing that a viatical settlement contract is
88 void and unenforceable by either party if the viatical
89 settlement policy is subject, within a specified
90 timeframe, to a loan secured by an interest in the
91 policy; revising conditions and requirements in which
92 viatical settlement contracts entered into within
93 specified timeframes are valid and enforceable;
94 deleting



322168

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Young) recommended the following:

Senate Amendment (with title amendment)

Between lines 282 and 283

insert:

Section 8. Section 626.99291, Florida Statutes, is created to read:

626.99291 Notice to insureds.-

(1) A life insurer shall provide an individual life insurance policyholder with a statement informing him or her that if he or she is considering making changes in the status of



322168

11 his or her policy, he or she should consult with a licensed
12 insurance or financial advisor. The statement may accompany or
13 be included in notices or mailings otherwise provided to the
14 policyholder.

15 (2) The statement must also advise the policyholder that he
16 or she may contact the office for more information and include a
17 website address or other location or manner by which the
18 policyholder may contact the office.

19
20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 Delete line 24

23 and insert:

24 practices; creating s. 626.99291, F.S.; requiring life
25 insurers to provide a specified statement to
26 individual life insurance policyholders; authorizing
27 such statements to accompany or be included in notices
28 or mailings provided to the policyholders; requiring
29 such statements to include contact information;
30 providing an effective date.

By the Committee on Banking and Insurance; and Senators Young
and Broxson

597-02946-17

20171600c1

1 A bill to be entitled
2 An act relating to viatical settlement contracts;
3 amending s. 626.9911, F.S.; defining the terms
4 "fraudulent viatical settlement act" and "stranger-
5 originated life insurance practice" for purposes of
6 provisions relating to the Viatical Settlement Act;
7 amending ss. 626.9924 and 626.99245, F.S.; conforming
8 cross-references; amending s. 626.99275, F.S.;

9 providing additional prohibited acts related to
10 viatical settlement contracts; amending s. 626.99287,
11 F.S.; extending the period in which viatical
12 settlement contracts are void and unenforceable;
13 revising conditions and requirements in which viatical
14 settlement contracts entered into within a specified
15 time period are valid and enforceable; deleting
16 provisions related to the transfer of insurance
17 policies or certificates to viatical settlement
18 providers; creating s. 626.99289, F.S.; providing that
19 certain contracts, agreements, arrangements, or
20 transactions relating to stranger-originated life
21 insurance practices are void and unenforceable;
22 creating s. 626.99290, F.S.; authorizing a life
23 insurer to contest policies obtained through such
24 practices; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsections (2) through (7) of section 626.9911,
29 Florida Statutes, are renumbered as subsections (3) through (8),

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

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20171600c1

30 respectively, present subsections (8) through (14) of that
31 section are renumbered as subsections (10) through (16),
32 respectively, and new subsections (2) and (9) are added to that
33 section, to read:

34 626.9911 Definitions.—As used in this act, the term:

35 (2) "Fraudulent viatical settlement act" means an act or
36 omission committed by a person who knowingly, or with intent to
37 defraud for the purpose of depriving another of property or for
38 pecuniary gain, commits or allows an employee or agent to commit
39 any of the following acts:

40 (a) Presenting, causing to be presented, or preparing with
41 the knowledge or belief that it will be presented to or by
42 another person, false or concealed material information as part
43 of, in support of, or concerning a fact material to:

44 1. An application for the issuance of a viatical settlement
45 contract or a life insurance policy;

46 2. The underwriting of a viatical settlement contract or a
47 life insurance policy;

48 3. A claim for payment or benefit pursuant to a viatical
49 settlement contract or a life insurance policy;

50 4. Premiums paid on a life insurance policy;

51 5. Payments and changes in ownership or beneficiary made in
52 accordance with the terms of a viatical settlement contract or a
53 life insurance policy;

54 6. The reinstatement or conversion of a life insurance
55 policy;

56 7. The solicitation, offer, effectuation, or sale of a
57 viatical settlement contract or a life insurance policy;

58 8. The issuance of written evidence of a viatical

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59 settlement contract or a life insurance policy; or

60 9. A financing transaction for a viatical settlement
61 contract or life insurance policy.

62 (b) Employing a plan, financial structure, device, scheme,
63 or artifice relating to viaticated policies for the purpose of
64 perpetrating fraud.

65 (c) Engaging in a stranger-originated life insurance
66 practice.

67 (d) Failing to disclose, upon request by an insurer, that
68 the prospective insured has undergone a life expectancy
69 evaluation by a person other than the insurer or its authorized
70 representatives in connection with the issuance of the life
71 insurance policy.

72 (e) Perpetuating a fraud or preventing the detection of a
73 fraud by:

74 1. Removing, concealing, altering, destroying, or
75 sequestering from the office the assets or records of a licensee
76 or other person engaged in the business of viatical settlements;

77 2. Misrepresenting or concealing the financial condition of
78 a licensee, financing entity, insurer, or other person;

79 3. Transacting in the business of viatical settlements in
80 violation of laws requiring a license, certificate of authority,
81 or other legal authority to transact such business; or

82 4. Filing with the office or the equivalent chief insurance
83 regulatory official of another jurisdiction a document that
84 contains false information or conceals information about a
85 material fact from the office or other regulatory official.

86 (f) Embezzlement, theft, misappropriation, or conversion of
87 moneys, funds, premiums, credits, or other property of a

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88 viatical settlement provider, insurer, insured, viator,
89 insurance policyowner, or other person engaged in the business
90 of viatical settlements or life insurance.

91 (g) Entering into, negotiating, brokering, or otherwise
92 dealing in a viatical settlement contract, the subject of which
93 is a life insurance policy that was obtained based on
94 information that was falsified or concealed for the purpose of
95 defrauding the policy's issuer, viatical settlement provider, or
96 viator.

97 (h) Facilitating the viator's change of residency state to
98 avoid the provisions of this act.

99 (i) Facilitating or causing the creation of a trust with a
100 non-Florida or other nonresident entity for the purpose of
101 owning a life insurance policy covering a Florida resident to
102 avoid the provisions of this act.

103 (j) Facilitating or causing the transfer of the ownership
104 of an insurance policy covering a Florida resident to a trust
105 with a situs outside this state or to another nonresident entity
106 to avoid the provisions of this act.

107 (k) Applying for or obtaining a loan that is secured
108 directly or indirectly by an interest in a life insurance
109 policy.

110 (l) Attempting to commit, assisting, aiding, or abetting in
111 the commission of, or conspiring to commit, an act or omission
112 specified in this subsection.

113 (9) "Stranger-originated life insurance practice" means an
114 act, practice, arrangement, or agreement to initiate a life
115 insurance policy for the benefit of a third-party investor who,
116 at the time of policy origination, has no insurable interest in

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117 the insured. Stranger-originated life insurance practices
118 include, but are not limited to:

119 (a) The purchase of a life insurance policy with resources
120 or guarantees from or through a person who, at the time of such
121 policy's inception, could not lawfully initiate the policy and
122 the execution of a verbal or written arrangement or agreement to
123 directly or indirectly transfer the ownership of such policy or
124 policy benefits to a third party.

125 (b) The creation of a trust or other entity that has the
126 appearance of an insurable interest in order to initiate
127 policies for investors, in violation of insurable interest laws
128 and the prohibition against wagering on life.

129 Section 2. Subsection (7) of section 626.9924, Florida
130 Statutes, is amended to read:

131 626.9924 Viatical settlement contracts; procedures;
132 rescission.—

133 (7) At any time during the contestable period, within 20
134 days after a viator executes documents necessary to transfer
135 rights under an insurance policy or within 20 days of any
136 agreement, option, promise, or any other form of understanding,
137 express or implied, to viaticate the policy, the provider must
138 give notice to the insurer of the policy that the policy has or
139 will become a viaticated policy. The notice must be accompanied
140 by the documents required by s. 626.99287 ~~626.99287(5)(a)~~ in
141 their entirety.

142 Section 3. Subsection (2) of section 626.99245, Florida
143 Statutes, is amended to read:

144 626.99245 Conflict of regulation of viaticals.—

145 (2) This section does not affect the requirement of ss.

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146 626.9911(14) ~~626.9911(12)~~ and 626.9912(1) that a viatical
147 settlement provider doing business from this state must obtain a
148 viatical settlement license from the office. As used in this
149 subsection, the term "doing business from this state" includes
150 effectuating viatical settlement contracts from offices in this
151 state, regardless of the state of residence of the viator.

152 Section 4. Subsection (1) of section 626.99275, Florida
153 Statutes, is amended to read:

154 626.99275 Prohibited practices; penalties.—

155 (1) It is unlawful for a ~~any~~ person to:

156 (a) ~~Fe~~ Knowingly enter into, broker, or otherwise deal in a
157 viatical settlement contract the subject of which is a life
158 insurance policy, knowing that the policy was obtained by
159 presenting materially false information concerning any fact
160 material to the policy or by concealing, for the purpose of
161 misleading another, information concerning any fact material to
162 the policy, where the viator or the viator's agent intended to
163 defraud the policy's issuer.

164 (b) ~~Fe~~ Knowingly or with the intent to defraud, for the
165 purpose of depriving another of property or for pecuniary gain,
166 issue or use a pattern of false, misleading, or deceptive life
167 expectancies.

168 (c) ~~Fe~~ Knowingly engage in any transaction, practice, or
169 course of business intending thereby to avoid the notice
170 requirements of s. 626.9924(7).

171 (d) ~~Fe~~ Knowingly or intentionally facilitate the change of
172 state of residency of a viator to avoid the provisions of this
173 chapter.

174 (e) Knowingly enter into a viatical settlement contract

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175 before the application for or issuance of a life insurance
 176 policy that is the subject of a viatical settlement contract or
 177 during the 5-year period commencing on the date of issuance of
 178 the policy or certificate, unless the viator provides a sworn
 179 affidavit and accompanying documentation in accordance with s.
 180 626.99287.

181 (f) Engage in a fraudulent viatical settlement act, as
 182 defined in s. 626.9911.

183 (g) Knowingly issue, solicit, market, or otherwise promote
 184 the purchase of a life insurance policy for the purpose of or
 185 with an emphasis on selling the policy to a third party.

186 (h) Engage in a stranger-originated life insurance
 187 practice, as defined in s. 626.9911.

188 Section 5. Section 626.99287, Florida Statutes, is amended
 189 to read:

190 626.99287 Contestability of viaticated policies.—Except as
 191 hereinafter provided, if a viatical settlement contract is
 192 entered into during within the 5-year 2-year period commencing
 193 on with the date of issuance of the insurance policy or
 194 certificate to be acquired, the viatical settlement contract is
 195 void and unenforceable by either party. Notwithstanding this
 196 limitation, such a viatical settlement contract is not void and
 197 unenforceable if the viator provides a sworn affidavit and
 198 accompanying independent evidentiary documentation certifying to
 199 the viatical settlement provider that one or more of the
 200 following conditions were met during the 5-year period:

201 (1) The policy was issued upon the owner's exercise of
 202 conversion rights arising out of a group or term policy, if the
 203 total time covered under the prior policy is at least 60 months.

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

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204 The time covered under a group policy shall be calculated
 205 without regard to any change in insurance carriers, provided the
 206 coverage has been continuous and under the same group
 207 sponsorship.†

208 (2) The owner of the policy is a charitable organization
 209 exempt from taxation under 26 U.S.C. s. 501(c)(3).†

210 (3) The owner of the policy is not a natural person.†

211 ~~(4) The viatical settlement contract was entered into~~
 212 ~~before July 1, 2000.~~

213 ~~(4)(5) The viator certifies by producing independent~~
 214 ~~evidence to the viatical settlement provider that one or more of~~
 215 ~~the following conditions have been met within the 2 year period:~~

216 ~~(a)1. The viator or insured is terminally or chronically~~
 217 ~~ill diagnosed with an illness or condition that is either:~~

218 ~~a. Catastrophic or life threatening; or~~

219 ~~b. Requires a course of treatment for a period of at least~~
 220 ~~3 years of long-term care or home health care; and~~

221 ~~2. the condition was not known to the insured at the time~~
 222 ~~the life insurance contract was entered into.~~

223 ~~(5)(b) The viator's spouse dies.~~†

224 ~~(6)(e) The viator divorces his or her spouse.~~†

225 ~~(7)(d) The viator retires from full-time employment.~~†

226 ~~(8)(e) The viator becomes physically or mentally disabled~~
 227 ~~and a physician determines that the disability prevents the~~
 228 ~~viator from maintaining full-time employment.~~†

229 ~~(9)(f) The owner of the policy was the insured's employer~~
 230 ~~at the time the policy or certificate was issued and the~~
 231 ~~employment relationship terminated.~~†

232 ~~(10)(g) A final order, judgment, or decree is entered by a~~

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233 court of competent jurisdiction, on the application of a
 234 creditor of the viator, adjudicating the viator bankrupt or
 235 insolvent, or approving a petition seeking reorganization of the
 236 viator or appointing a receiver, trustee, or liquidator to all
 237 or a substantial part of the viator's assets, ~~or~~

238 (11) (A) The viator experiences a significant decrease in
 239 income which is unexpected by the viator and which impairs his
 240 or her reasonable ability to pay the policy premium.

241 (12) The viator entered into a viatical settlement contract
 242 more than 2 years after the policy's issuance date and, with
 243 respect to the policy, at all times before the date that is 2
 244 years after policy issuance, each of the following conditions
 245 are met:

246 (a) Policy premiums have been funded exclusively with
 247 unencumbered assets, including an interest in the life insurance
 248 policy being financed only to the extent of its net cash
 249 surrender value, provided by, or fully recourse liability
 250 incurred by, the insured;

251 (b) There is no agreement or understanding with any other
 252 person to guarantee any such liability or to purchase, or stand
 253 ready to purchase, the policy, including through an assumption
 254 or forgiveness of the loan; and

255 (c) Neither the insured nor the policy has been evaluated
 256 for settlement.

257
 258 ~~If the viatical settlement provider submits to the insurer a~~
 259 ~~copy of the viator's or owner's certification described above,~~
 260 ~~then the provider submits a request to the insurer to effect the~~
 261 ~~transfer of the policy or certificate to the viatical settlement~~

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262 ~~provider, the viatical settlement agreement shall not be void or~~
 263 ~~unenforceable by operation of this section. The insurer shall~~
 264 ~~timely respond to such request. Nothing in this section shall~~
 265 ~~prohibit an insurer from exercising its right during the~~
 266 ~~contestability period to contest the validity of any policy on~~
 267 ~~grounds of fraud.~~

268 Section 6. Section 626.99289, Florida Statutes, is created
 269 to read:

270 626.99289 Void and unenforceable contracts, agreements,
 271 arrangements, and transactions.—Notwithstanding s. 627.455, a
 272 contract, agreement, arrangement, or transaction, including, but
 273 not limited to, a financing agreement or any other arrangement
 274 or understanding entered into, whether written or verbal, for
 275 the furtherance or aid of a stranger-originated life insurance
 276 practice is void and unenforceable.

277 Section 7. Section 626.99290, Florida Statutes, is created
 278 to read:

279 626.99290 Contestability of life insurance policies.—
 280 Notwithstanding s. 627.455, a life insurer may contest a life
 281 insurance policy if the policy was obtained by a stranger-
 282 originated life insurance practice, as defined in s. 626.9911.

283 Section 8. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12
Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG

18th District

March 28, 2017

Senator Jack Latvala, Chair
Senate Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chairman Latvala,

My Senate Bill 1600, Viatical Settlement Contracts has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Thank you for your consideration of this request. If I need to provide you with more information, please do not hesitate to contact me.

Sincerely,

Dana Young
State Senator – 18th District

cc: Mike Hansen, Staff Director – Senate Committee on Appropriations

REPLY TO:

- 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 20, 2017
Meeting Date

1600
Bill Number (if applicable)

Topic Viatical Settlements

Amendment Barcode (if applicable)

Name Josh Aubuchon

Job Title Attorney

Address 315 S. Calhoun St.
Street

Phone 224-7000

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 New York 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

4/20/17

Meeting Date

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

1600

Bill Number (if applicable)

Topic Viatical Settlement Contracts

Amendment Barcode (if applicable)

Name Candice Ericks

Job Title

Address 205 S. Adams St

Phone 954-648-1204

Street

Email

City

State

Zip

Speaking: For Against Information

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

Representing Life Insurance Settlement 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.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 1604

INTRODUCER: Governmental Oversight and Accountability Committee; Criminal Justice Committee;
and Senator Bracy

SUBJECT: Department of Corrections

DATE: April 19, 2017

REVISED: 4/24/2017

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Sumner</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2. <u>Ferrin</u>	<u>Ferrin</u>	<u>GO</u>	<u>Fav/CS</u>
3. <u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1604 amends various provisions related to the Department of Corrections (DOC).

The bill authorizes the Florida Department of Law Enforcement (FDLE), when conducting an investigation or assisting the investigation of an injury to or death of an inmate under the custody or control of the Department of Corrections (DOC), to serve a demand for production of the inmate's protected health information, medical records, or mental health records on the DOC.

The bill also makes the following changes:

- Revises the duties of the security review committee and the Secretary of Corrections;
- Authorizes the DOC to receive documents electronically for inmate admission;
- Allows *all* inmates who are recommended and otherwise eligible to be granted a one-time award of 60 additional days of incentive gain-time;
- Revises training requirements for prisoner transport company employees;
- Exempts employees of contracted community correctional centers from health testing regulations for administering urine screen drug tests on inmates and releasees;
- Aligns the age limits for housing youthful offenders with the federal Prison Rape Elimination Act (PREA) by reducing the maximum age from 19 to 18 years of age when designating separate institutions and programs for youthful offenders and making conforming changes;

- Expands the eligibility of inmates released under the conditional medical release program to include inmates with debilitating illnesses and places additional criteria on eligibility for this type of supervised release; and
- Revises the roles of the DOC and the Florida Commission on Offender Review in granting conditional medical release.

The impact of this bill to DOC is a small shift in the release date of some inmates (those that meet the criteria and do not already get to their 85 percent dates); the estimated long-term impact is indeterminate. The cost of the changes to the Conditional Medical Release program are unknown at this time. However, costs associated with the supervised release of eligible inmates may be offset by savings related to the housing and care of such inmates by the DOC. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2017

II. Present Situation:

Criminal Justice Investigations and Forensic Science Program

The FDLE houses the Criminal Justice Investigations and Forensic Science Program. The purpose of the program is to investigate violations of any of the criminal laws of the state. Investigators have the authority to bear arms, make arrests and apply for, serve, and execute warrants, *caipias*, and other process of the court.¹

The General Appropriations Act directs the FDLE to investigate all deaths of inmates who are in the custody of the DOC and all use of force incidents that result in death or serious bodily injury.² An investigation can be initiated by executive order of the Governor or by an existing MOU, which requires the FDLE to investigate any incident that results in life-threatening injuries or death of an inmate or person on the property at a DOC facility that occurs as a result of anything other than apparent natural causes. Additionally, the DOC can request the FDLE to assist with the investigation of a credible complaint or other significant evidence of major organized criminal activity involving inmates or DOC employees. In Fiscal Year 2015-2016, there were 148 cases related to the DOC that were investigated by the FDLE.³

Security of Corrections Institutions and Facilities

Pursuant to s. 944.151, F.S., the DOC is responsible for the security of the state's correctional institutions and facilities. To ensure public safety and contain violent and chronic offenders until released from the DOC's custody, the Secretary of Corrections is assigned certain minimum responsibilities:

- Appoint a security review committee.
- Maintain and produce quarterly reports with accurate escape statistics.

¹ Section 943.04, F.S.

² Introductory proviso for specific appropriations 1217 through 1229, ch. 2016-66, L.O.F. See also introductory proviso for specific appropriations 1252 through 1264, ch. 2015-232, L.O.F.

³ Florida Department of Law Enforcement, *Long Range Program Plan FY 17-18 through 21-22*, September 30, 2016, pages 6-7.

- Adopt, enforce, and annually evaluate the emergency escape response procedures, which include, at a minimum, the immediate notification and inclusion of local and state law enforcement through a mutual aid agreement.
- Submit in the annual legislative budget request a prioritized summary of critical repair and renovation security needs.

The security review committee is required to be composed of the following individuals, appointed by the Secretary: the DOC's inspector general, the statewide security coordinator, the regional security coordinators, three wardens, and one correctional officer. The security review committee must:

- Establish a periodic schedule for the physical inspection of buildings and structures of each state and private correctional institution to determine security deficiencies. Priority must be given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a significant number of escapes or escape attempts in the past.
- Conduct announced and unannounced comprehensive security audits of all state and private correctional institutions. Priority must be given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a history of escapes or escape attempts. The audit must include an evaluation of the physical plant, landscaping, fencing, security alarms and perimeter lighting, and inmate classification and staffing policies. Each correctional institution must be audited at least annually. The Secretary reports the general survey findings annually to the Governor and the Legislature.
- Adopt and enforce minimum security standards and policies that include, but are not limited to:
 - Random monitoring of outgoing telephone calls by inmates;
 - Maintenance of current photographs of all inmates;
 - Daily inmate counts at varied intervals;
 - Use of canine units, where appropriate;
 - Use of escape alarms and perimeter lighting;
 - Florida Crime Information Center/National Crime Information Center capabilities; and
 - Employment background investigations.
- Make annual written prioritized budget recommendations to the Secretary that identify critical security deficiencies at major correctional institutions.
- Investigate and evaluate the usefulness and dependability of existing security technology at the institutions and new technology available and make periodic written recommendations to the Secretary on the discontinuation or purchase of various security devices.
- Contract, if deemed necessary, with security personnel, consulting engineers, architects, or other security experts for security audits and security consultant services.
- Establish a periodic schedule for conducting announced and unannounced escape simulation drills.

Commitments and Classification; Transfers

Section 944.17, F.S., provides that prisoners sentenced to state prison must be committed by the court to the custody of the DOC. Usually the prisoner has been in the custody of a sheriff in

county jail. The sheriff receives the documents from the clerk of court required for the DOC to accept an inmate.⁴

The sheriff or chief correctional officer, or a designated representative, must submit the following forms before a person will be admitted into the state correctional system:

- The uniform commitment and judgment and sentence forms;
- The sheriff's certificate (information related to time spent in the sheriff's custody);
- A certified copy of the indictment or information relating to the offense for which the person was convicted;
- A copy of the probable cause affidavit for each offense identified in the current indictment or information;
- A copy of the Criminal Punishment Code scoresheet and any attachments thereto prepared pursuant to Rule 3.701, Rule 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or any other rule pertaining to the preparation of felony sentencing scoresheets;
- A copy of the restitution order or the reasons by the court for not requiring restitution;
- The name and address of any victim, if available;
- A printout of a current criminal history record as provided through an FCIC/NCIC printer; and
- Any available health assessments including medical, mental health, and dental, including laboratory or test findings; custody classification; disciplinary and adjustment; and substance abuse assessment and treatment information which may have been developed during the period of incarceration prior to the transfer of the person to the DOC's custody.⁵

In addition to the above, the sheriff or other officer must provide any available presentence investigation reports and any attached documents. Usually, transport officers provide the documents to DOC's staff at the reception facility at the time the inmate is transported.⁶ After a prisoner is admitted into the state correctional system, the DOC may request such additional records relating to the prisoner from the clerk of the court, the Department of Children and Families, or any other state or county agency for determining the prisoner's proper custody classification, gain-time eligibility, or eligibility for early release programs.

Gain-Time

Section 944.275, F.S., allows the DOC to grant deductions from sentences in the form of gain-time in order to encourage satisfactory prisoner behavior, to provide incentive for prisoners to participate in productive activities, and to reward prisoners who perform outstanding deeds or services.

The DOC grants basic gain-time at the rate of 10 days for each month of each sentence imposed on a prisoner to encourage satisfactory behavior, subject to the following:

- Portions of any sentences to be served concurrently are treated as a single sentence when determining basic gain-time;

⁴ Department of Corrections, *Agency Bill Analysis: SB 1604*, March 10, 2017 (on file with the Senate Committee on Criminal Justice).

⁵ Section 944.17(5), F.S.

⁶ Department of Corrections, *Agency Bill Analysis: SB 1604*, March 10, 2017.

- Basic gain-time for a partial month is prorated on the basis of a 30-day month; and
- When a prisoner receives a new maximum sentence expiration date because of additional sentences imposed, basic gain-time is granted for the amount of time the maximum sentence expiration date was extended.⁷

The DOC may grant incentive gain-time for each month during which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities. The rate of incentive gain-time in effect on the date the inmate committed the offense that resulted in his or her incarceration is the inmate's rate of eligibility to earn incentive gain-time throughout the period of incarceration and cannot be altered by a subsequent change in the severity level of the offense for which the inmate was sentenced.⁸

The DOC may grant meritorious gain-time to an inmate who performs some outstanding deed, such as saving a life or assisting in recapturing an escaped inmate, or who in some manner performs an outstanding service that would merit the granting of additional deductions from the term of his or her sentence. The grant of meritorious gain-time may be 1 to 60 days.⁹

The DOC may grant, upon a recommendation of the education program manager, a one-time award of 60 additional days of incentive gain-time to an inmate who is otherwise eligible and who successfully completes requirements for and is awarded a high school equivalency diploma or vocational certificate. An inmate may not receive more than 60 days for educational attainment.¹⁰

For sentences imposed for offenses committed on or after October 1, 1995, an inmate cannot earn any type of gain-time in an amount that would cause his or her sentence to expire, end, or terminate, or that would result in his or her release, prior to serving a minimum of 85 percent of the sentence imposed.¹¹ However, inmates with sentences imposed for offenses committed prior to October 1, 1995, can earn the educational gain-time over and above the rate of monthly gain-time eligibility limitations.¹²

Transportation and Return of Prisoners by Private Transport Company

Section 944.597, F.S., authorizes the DOC to contract with private companies for the transport of prisoners within and beyond the limits of the state. A contract with the transport company must include, but is not limited to, the following requirements:

- That the transport company maintains adequate liability coverage with respect to the transportation of prisoners;
- That transport company personnel based in the state meet the minimum standards in accordance with the statutory requirements for Florida law enforcement and correctional officers, and that personnel based outside of Florida meet the minimum standards for a law enforcement or correctional officers in the state where the employee is based;

⁷ Section 944.275(4)(a), F.S.

⁸ Section 944.275(4)(b), F.S.

⁹ Section 944.275(4)(c), F.S.

¹⁰ Section 944.275(4)(d), F.S.

¹¹ Section 944.275(4)(b)3., F.S.

¹² Section 944.275(4)(d), F.S. (“Notwithstanding subparagraphs (b)1. and 2., ...”). *See also* s. 944.275(4)(b)1. and 2., F.S.

- That the transport company adheres to standards which provide for humane treatment of prisoners while in the custody of the transport company; and
- That the transport company submits reports to the DOC regarding incidents of escape, use of force, and accidents involving prisoners in the custody of the transport company.

Exemptions from Health Testing Regulations for Personnel Conducting Drug Tests on Inmates and Releasees

Section 945.36, F.S., exempts law enforcement officers, state or county probation officers, or employees of the DOC from the minimum standards found under part I of ch. 483, F.S., governing state clinical laboratories, when administering a urine screen drug test to:

- Persons during incarceration;
- Persons released, as a condition of probation for either a felony or misdemeanor; or
- Persons released, as a condition of community control, conditional release, control release, parole, provisional release, or pretrial release.

The DOC is required to develop a procedure for certification of any law enforcement officer, state or county probation officer, or DOC employee to perform a urine screen drug test on the persons specified above.

Institutions and Programs for Youthful Offenders

Section 958.11, F.S., requires the DOC to designate separate institutions and programs for youthful offenders and employ and utilize personnel specially qualified by training and experience to operate all such institutions and programs for youthful offenders.

Youthful offenders who are at least 14 years of age but are under 19 years of age at the time of reception must be separated from youthful offenders who are 19 years of age or older. If the population of the facilities designated for 14 to 18-year-old youthful offenders exceeds 100 percent of lawful capacity, the DOC may assign 18-year-old youthful offenders to the 19 to 24-year-old facility.

If the youthful offender was originally assigned to a facility designated for 14 to 18-year-old youthful offenders, but subsequently reaches 19 years of age, the DOC may retain the youthful offender in the facility if the DOC determines it is in the best interest of the youthful offender and the DOC.

If the DOC determines that a youthful offender assigned to the 19 to 24-year-old facility is mentally or physically vulnerable, the youthful offender may be reassigned to a facility designated for the 14 to 18-year-old group if the department determines that a reassignment is necessary to protect the safety of the youthful offender or the institution.

If the DOC determines that a youthful offender originally assigned to a facility designated for the 14 to 18-year-old group is disruptive, incorrigible, or uncontrollable, the youthful offender may be assigned to a facility designated for the 19 to 24-year-old group if the DOC determines that a reassignment would best serve the interests of the youthful offender and the DOC.

The guidelines of the Federal Prison Rape Elimination Act (PREA) of 2003 require that inmates under the age of 18 be separated from anyone 18 years of age or older.¹³ The DOC states that it currently maintains separate housing for those inmates who are 17 years of age and under, those who are 18 years of age, and those who are 19 to 21 years of age, in order to meet both the statutes and PREA guidelines.¹⁴

Conditional Medical Release

In 1992, the Florida Legislature created the Conditional Medical Release Program¹⁵ which is a discretionary release process allowing the Florida Commission on Offender Review (FCOR) to release inmates on supervision who are terminally ill¹⁶ or permanently incapacitated¹⁷ and who are not a danger to others.¹⁸ The DOC is responsible for recommending to the FCOR inmates who are eligible to be considered for conditional medical release.¹⁹ The FCOR has the discretion and sole authority on whether or not to grant conditional medical release.²⁰ Upon release, the offender is subject to conditions of supervision set by the FCOR. The FCOR monitors the offender's progress through periodic medical reviews.²¹ Supervision can be revoked and the offender returned to prison if the FCOR determines that a willful and substantial violation of supervision has occurred or if their medical or physical condition improves to the point that the offender no longer meets release criteria.²² The DOC has recommended 107 inmates for release in the past three fiscal years. The FCOR granted release to 52, or 49%, of those recommended. In the 2015-2016 Fiscal Year, the FCOR granted 29 of the 51 inmates recommended for conditional medical release, or 57%.²³

III. Effect of Proposed Changes:

Criminal Justice Investigations (Section 1)

Currently, the DOC requires the FDLE to serve on the DOC a HIPAA complaint subpoena or search warrant in order to receive an inmate's protected health information, medical record, or mental health record when the FDLE is investigating or assisting the DOC in the investigation of

¹³ National PREA Resource Center, *Youthful Inmate Implementation*, available at <https://www.prearesourcecenter.org/training-technical-assistance/prea-in-action/youthful-inmate-implementation> (last visited March 16, 2017). 28 CFR 115.5 (*youthful inmate*) and 115.14.

¹⁴ Department of Corrections, *2017 Agency Bill Analysis: SB 1604*, March 10, 2017.

¹⁵ Ch.92-310, Laws of Fla.

¹⁶ Section 947.149(1)(b), F.S. Terminally ill means an inmate who has a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that the inmate does not constitute a danger to herself or himself or others.

¹⁷ Section 947.149(1)(a), F.S. Permanently incapacitated means inmate who has a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others.

¹⁸ Section 947.149(1), F.S.

¹⁹ Section 947.149(2), F.S.

²⁰ Section 947.149(3), F.S.

²¹ Section 947.149(4), F.S.

²² Section 947.149(5), F.S.

²³ Florida Commission on Offender Review, *2016 Annual Report*, available at <https://www.fc.or.state.fl.us/docs/reports/FCORannualreport201516.pdf> (last visited April 4, 2017).

an inmate's injury or death and the inmate cannot (due to unresponsiveness or death) or does not consent to release of the information.²⁴

Section 1 amends s. 943.04, F.S., to provide that if the FDLE is conducting an investigation or assisting in the investigation of an injury to or death of an inmate under the custody or control of the DOC, then the FDLE is authorized to serve a demand for production of the inmate's protected health information, medical records, or mental health records on the DOC. The FDLE must use the records for the limited purpose of investigating or assisting in an investigation of an injury to or death of an inmate. Any records disclosed to the FDLE pursuant to the investigation must remain confidential and exempt from public inspection and copying.²⁵

Security of Corrections Institutions and Facilities (Section 2)

Section 2 amends s. 944.151, F.S., to align the statute with current DOC policies and practices.²⁶

The section adds to the DOC's responsibilities:

- "Safe operation" of correctional institutions and facilities.
- Ensuring the "safety of department employees and offenders."

The section revises the duties of the security review committee and the Secretary of Corrections.

The section revises the composition, title, and duties of the security review committee making it the "safety and security review committee" and providing that the committee shall evaluate new safety and security technology, review and discuss current issues impacting state and private correctional institutions and facilities, and review and discuss other issues as requested by DOC management. The bill replaces the former composition of the committee with "appropriate department staff" appointed by the Secretary.

Other duties of the former security review committee, discussed above in the Present Situation, are transferred to the Secretary, who is required to direct appropriate DOC staff to accomplish the duties. Under the bill, these former duties are also amended as follows:

- Inspect institutions and facilities that have experienced a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse.
- Announced an unannounced comprehensive security audits must give priority to institutions and facilities that have experienced a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or sexual abuse. This replaces current statutory priority given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a history of escapes or escape attempts.
- Audit requirements include an evaluation of the confinement, arsenal, key and lock, and entrance and exit policies.

²⁴ *Id.*

²⁵ These records are already confidential and exempt under s. 945.10, F.S. See SB 1526 (2017), which amends s. 945.10, F.S., to expand the public records exemption to include additional health information and aligns disclosures allowed by the statute with federal Health Insurance Portability and Accountability Act laws.

²⁶ Department of Corrections, *2017 Agency Bill Analysis: SB 1604*, March 10, 2017.

- Evaluation of the physical plant polices include the identification of blind spots or areas where staff or inmates may be isolated and the deployment of video monitoring systems and other appropriate monitoring technologies in the spots or areas.

Commitments and Classification; Transfers (Section 3)

Section 3 amends s. 944.17, F.S., to allow electronic transmission of documents from the sheriff, chief correctional officer, other officer, clerk of the court, and other state agencies to the DOC relating to the admission of the inmate into the correctional system.

Gain-Time (Section 4)

Section 4 revises the conditions in s. 944.275(4)(d), F.S., allowing the education program manager to recommend a one-time award of 60 additional days of incentive gain-time to an inmate who is otherwise eligible and who successfully completes requirements for and is or has been during the current commitment, awarded a high school equivalency diploma or vocational certificate.²⁷ An inmate with a sentence imposed for an offense committed on or after October 1, 1995, will be ineligible to earn educational gain-time if earning such gain-time would cause his or her sentence to expire, end, or terminate, or would result in his or her release, prior to serving a minimum of 85 percent of the sentence imposed.

Transportation and Return of Prisoners by Private Transport Company (Section 5)

Section 5 amends s. 944.597, F.S., to revise the requirements for contract provisions relating to training of transport company employees. The transport company must require its employees to complete at least 100 hours of training before transporting prisoners. The training curriculum must be approved by the DOC and include instruction in:

- Use of restraints;
- Searches of prisoners;
- Use of force, including use of appropriate weapons and firearms;
- Cardiopulmonary resuscitation;
- Map reading; and
- Defensive driving.

This change aligns the requirements for the transport of prisoners from prisons with the requirements for the transport of prisoners from jail.²⁸

²⁷ Offenses committed prior to January 1, 1994; on or after January 1, 1994, and before October 1, 1995; and on or after October 1, 1995.

²⁸ Department of Corrections, *2017 Agency Bill Analysis: SB 1604*, March 10, 2017. The DOC cites the example of s. 30.24, F.S., relating to sheriffs' transportation and return of prisoners, which exempts personnel employed by any transport company for the transportation of prisoners from being deputy sheriffs, providing bond, or meeting requirements and training as provided by the Criminal Justice Standards and Training.

Exemptions from Health Testing Regulations for Personnel Conducting Drug Tests on Inmates and Releasees (Section 6)

Section 6 amends s. 945.36, F.S., to exempt employees of a contracted community correctional center from health testing regulations (found under part I of ch. 483, F.S., governing state clinical laboratories) for the limited purpose of administering urine screen drug tests on inmates and releasees. This will allow on-site testing and eliminate the need for a correctional officer to travel to a facility to perform the test.

Institutions and Programs for Youthful Offenders (Section 7)

Section 7 amends s. 958.11, F.S., to change the age limits on the housing of youthful offenders to align with the federal PREA requirements. It changes the maximum age from 19 to 18 years of age when designating separate institutions and programs for youthful offenders.

The section authorizes the DOC to assign a youthful offender who is 18 years of age or older to a facility that is not designated for youthful offenders or an age group if he or she is convicted of a new crime that is a felony; is a serious management or disciplinary problem that is detrimental to the program or other inmates; needs medical or other treatment; should be transferred outside of the facility for services; or when bed space is not available in a designated community residential facility.

The section authorizes inmates who are 17 years of age or under to be placed at an adult facility for medical or mental health reasons, for protective management, or for close management. The youthful offender must be separated from offenders who are 18 years of age or older.

If the youthful offender was originally assigned to a facility designated for 14 to 17-year-old youthful offenders, but subsequently reaches 18 years of age, the DOC may retain the youthful offender in the facility if the DOC determines it is in the best interest of the youthful offender and the DOC. Additionally, if the youthful offender was originally assigned to a facility designated for 18 to 22-year-old youthful offenders, but subsequently reaches 23 years of age, the DOC may retain the youthful offender in the facility until he or she reaches 25 years of age if the department determines that it is in the best interest of the child and the DOC.

The section repeals a provision that allowed reassignment of mentally or physically vulnerable youthful offenders between 19 to 24 years of age to facilities designated for the 14 to 18-year-old age group if the DOC determined that the reassignment was necessary to protect the safety of the youthful offender or the institution.

The section also repeals a provision that allowed reassignment of disruptive, incorrigible, or uncontrollable youthful offenders between 14 and 18 years of age to facilities for the 19 to 24-year-old age group if the department determined that a reassignment would be in the youthful offender's and the DOC's best interests.

Conditional Medical Release Program (Section 9)

Section 9 amends s. 947.149, F.S., to expand the eligibility of inmate release under the conditional medical release program to include inmates with debilitating illnesses. An “inmate with a debilitating illness” is defined as an inmate who is determined to be suffering from a significant and permanent non-terminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that he or she does not present any danger to society. He or she must have served at least 50 percent of his or her sentence.

Under the section, an inmate eligible for supervised medical release must have a debilitating illness, be permanently incapacitated, or be terminally ill, and:

- Have been convicted of a felony;
- Have no current or prior conviction for a capital or first degree felony, for a sexual offense, or for an offense involving a child;
- Have not received a disciplinary report within the previous 6 months;
- Have never received a disciplinary report for a violent act; and
- Have renounced any gang affiliation.

The DOC is required to refer the eligible inmates to the Florida Commission on Offender Review (FCOR) who must verify the referral.

The referral must include a proposed conditional medical release plan, medical history, prison experience, criminal history, any history of substance abuse and mental health issues, any disciplinary action against the inmate while in prison, any participation in prison work and other prison programs, and any other information deemed necessary by the DOC. The criminal history must include:

- A claim of innocence, if any;
- The degree to which the inmate accepts responsibility for the acts leading to the conviction; and
- How any claim of responsibility has affected the inmate’s feelings of remorse.

The FCOR must finish its verification of the eligibility of an inmate within 60 days after the DOC refers the inmate for conditional medical release. The bill requires conditional medical release to be granted to inmates that FCOR verifies are eligible. Any discretion the FCOR has is limited to conditions placed on the supervision of a released inmate, including electronic monitoring.

Effective Date

The bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Section 4 – Educational Gain-Time

The impact of this bill to DOC is a small shift in the release date of some inmates (those that meet the criteria and do not already get to their 85 percent dates); the estimated long-term impact is indeterminate.

However, using the inmate variable per diem (health care costs and personal care items), the DOC estimates that the first year of implementation will have an impact on the average daily population (ADP) of approximately 86 fewer inmates.

Year 1 Impact-Population Reduction: $(86) \times \$15.91 = (\$499,415)$

Section 9 – Conditional Medical Release

The cost of the changes to the Conditional Medical Release program are unknown at this time. The expansion of eligibility for conditional medical release together with the requirement for DOC to refer eligible inmates to FCOR for review will increase the volume and workload for both the DOC and the FCOR. However, costs associated with the supervised release of eligible inmates may be offset by savings related to the housing and care of such inmates by the DOC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.04, 944.151, 944.17, 944.275, 944.597, 945.36, 947.149, and 958.11.

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 Governmental Oversight and Accountability on April 3, 2017:

- Removes Section 1 of CS/SB 1604, which converted employee classification for correctional officer lieutenants and captains and correctional probation officer supervisors and senior supervisors from Career Service to Select Exempt Service.
- Expands the eligibility of inmate release under the conditional medical release program to include inmates with debilitating illnesses, and places additional criteria on eligibility for this type of supervised release.

CS by Criminal Justice on March 21, 2017:

The CS amends s. 944.275, F.S., clarifying that the 85 percent limitation on earning gain-time applies to all the types of gain-time.

- B. **Amendments:**

None.

By the Committees on Governmental Oversight and Accountability;
and Criminal Justice; and Senator Bracy

585-03377-17

20171604c2

1 A bill to be entitled
2 An act relating to the Department of Corrections;
3 amending s. 943.04, F.S.; authorizing the Department
4 of Law Enforcement to issue an investigative demand
5 seeking the production of an inmate's protected health
6 information, medical records, or mental health records
7 under certain circumstances; specifying requirements
8 for the investigative demand; amending s. 944.151,
9 F.S.; revising legislative intent; revising membership
10 requirements for the safety and security review
11 committee appointed by the Department of Corrections;
12 specifying the duties of the committee; requiring the
13 department to direct appropriate staff to complete
14 specified duties of the department; revising
15 scheduling requirements for inspections of state and
16 private correctional institutions and facilities;
17 revising the list of institutions that must be given
18 priority for inspection; revising the list of
19 institutions that must be given priority for certain
20 security audits; revising minimum audit and evaluation
21 requirements; requiring the department to direct
22 appropriate staff to review staffing policies and
23 practices as needed; conforming provisions to changes
24 made by the act; amending s. 944.17, F.S.; authorizing
25 the department to receive specified documents
26 electronically at its discretion; amending s. 944.275,
27 F.S.; revising the conditions on which an inmate may
28 be granted a one-time award of 60 additional days of
29 incentive gain-time by the department; clarifying when

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30 gain-time can be earned; amending s. 944.597, F.S.;
31 revising provisions relating to training of a
32 transport company's employees before transporting
33 prisoners; amending s. 945.36, F.S.; exempting
34 employees of a contracted community correctional
35 center from certain health testing regulations for the
36 limited purpose of administering urine screen drug
37 tests on inmates and releasees; amending s. 958.11,
38 F.S.; deleting a provision authorizing the department
39 to assign 18-year-old youthful offenders to the 19-24
40 age group facility under certain circumstances;
41 deleting a condition that all female youth offenders
42 are allowed to continue to be housed together only
43 until certain institutions are established or adapted
44 for separation by age and custody classifications;
45 authorizing inmates who are 17 years of age or under
46 to be placed at an adult facility for specified
47 purposes, subject to certain conditions; authorizing
48 the department to retain certain youthful offenders
49 until 25 years of age in a facility designated for 18-
50 to 22-year-old youth offenders under certain
51 circumstances; conforming provisions to changes made
52 by the act; amending s. 921.002, F.S.; conforming a
53 cross-reference; amending s. 947.149, F.S.; defining
54 the term "inmate with a debilitating illness";
55 expanding eligibility for conditional medical release
56 to include inmates with debilitating illnesses;
57 providing criteria for eligibility; requiring the
58 department to refer an eligible inmate for release;

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59 requiring the Commission on Offender Review to verify
60 the referral; requiring that the department's referral
61 for release include certain documents; providing an
62 effective date.

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

65
66 Section 1. Subsection (6) is added to section 943.04,
67 Florida Statutes, to read:

68 943.04 Criminal Justice Investigations and Forensic Science
69 Program; creation; investigative, forensic, and related
70 authority.-

71 (6) (a) In furtherance of the duties and responsibilities of
72 the inspector general under s. 944.31, if the Department of Law
73 Enforcement is conducting an investigation or assisting in the
74 investigation of an injury to or death of an inmate which occurs
75 while the inmate is under the custody or control of the
76 Department of Corrections, the department is authorized to,
77 before the initiation of a criminal proceeding relating to such
78 injury or death, issue in writing and serve upon the Department
79 of Corrections an investigative demand seeking the production of
80 the inmate's protected health information, medical records, or
81 mental health records as specified in s. 945.10(1)(a). The
82 department shall use such records for the limited purpose of
83 investigating or assisting in an investigation of an injury to
84 or death of an inmate for which the records were requested. Any
85 records disclosed pursuant to this subsection remain
86 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
87 of the State Constitution in accordance with s. 945.10(2).

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88 (b) The investigative demand must be specific and limited
89 in scope to the extent reasonably practicable in light of the
90 purpose for which the protected health information or records
91 are sought and must include a certification that:

92 1. The protected health information or records sought are
93 relevant and material to a legitimate law enforcement inquiry;

94 2. There is a clear connection between the investigated
95 incident and the inmate whose protected health information and
96 records are sought; and

97 3. De-identified information could not reasonably be used.

98 Section 2. Section 944.151, Florida Statutes, is amended to
99 read:

100 944.151 Safe operation and security of correctional
101 institutions and facilities.—It is the intent of the Legislature
102 that the Department of Corrections shall be responsible for the
103 safe operation and security of the correctional institutions and
104 facilities. The safe operation and security of the state's
105 correctional institutions and facilities are ~~is~~ critical to
106 ensure public safety and the safety of department employees and
107 offenders, and to contain violent and chronic offenders until
108 offenders are otherwise released from the department's custody
109 pursuant to law. The Secretary of Corrections shall, at a
110 minimum:

111 (1) Appoint appropriate department staff to a safety and
112 security review committee that ~~which~~ shall evaluate new safety
113 and security technology, review and discuss current issues
114 impacting state and private correctional institutions and
115 facilities, and review and discuss other issues as requested by
116 department management, ~~at a minimum, be composed of: the~~

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117 ~~inspector general, the statewide security coordinator, the~~
 118 ~~regional security coordinators, and three wardens and one~~
 119 ~~correctional officer. The security review committee shall:~~

120 (2)(a) Direct appropriate department staff to establish a
 121 periodic schedule for the physical inspection of buildings and
 122 structures of each state and private correctional institution
 123 and facility to determine safety and security deficiencies. In
 124 scheduling the inspections, priority shall be given to older
 125 institutions and facilities; ~~institutions and facilities that~~
 126 house a large proportion of violent offenders; institutions and
 127 facilities that have experienced a significant number of
 128 inappropriate incidents of use of force on inmates, assaults on
 129 employees, or inmate sexual abuse; ~~and institutions and~~
 130 facilities that have experienced a significant number of escapes
 131 or escape attempts in the past.

132 (3)(b) Direct appropriate department staff to conduct or
 133 cause to be conducted announced and unannounced comprehensive
 134 security audits of all state and private correctional
 135 institutions and facilities. Priority shall be given to those
 136 institutions and facilities that have experienced a significant
 137 number of inappropriate incidents of use of force on inmates,
 138 assaults on employees, or sexual abuse ~~In conducting the~~
 139 ~~security audits, priority shall be given to older institutions,~~
 140 ~~institutions that house a large proportion of violent offenders,~~
 141 ~~and institutions that have experienced a history of escapes or~~
 142 ~~escape attempts. At a minimum, the audit must shall include an~~
 143 ~~evaluation of the physical plant, landscaping, fencing, security~~
 144 ~~alarms and perimeter lighting, and confinement, arsenal, key and~~
 145 ~~lock, and entrance and exit inmate classification and staffing~~

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146 policies. The evaluation of the physical plant policies must
 147 include the identification of blind spots or areas where staff
 148 or inmates may be isolated and the deployment of video
 149 monitoring systems and other appropriate monitoring technologies
 150 in such spots or areas. Each correctional institution and
 151 facility shall be audited at least annually. The secretary shall
 152 annually report the audit general survey findings annually to
 153 the Governor and the Legislature.

154 ~~(c) Adopt and enforce minimum security standards and~~
 155 ~~policies that include, but are not limited to:~~

156 ~~1. Random monitoring of outgoing telephone calls by~~
 157 ~~inmates.~~

158 ~~2. Maintenance of current photographs of all inmates.~~

159 ~~3. Daily inmate counts at varied intervals.~~

160 ~~4. Use of canine units, where appropriate.~~

161 ~~5. Use of escape alarms and perimeter lighting.~~

162 ~~6. Florida Crime Information Center/National Crime~~
 163 ~~Information Center capabilities.~~

164 ~~7. Employment background investigations.~~

165 ~~(d) Annually make written prioritized budget~~
 166 ~~recommendations to the secretary that identify critical security~~
 167 ~~deficiencies at major correctional institutions.~~

168 (4)(e) Direct appropriate department staff to investigate
 169 and evaluate the usefulness and dependability of existing safety
 170 and security technology at state and private correctional the
 171 institutions and facilities, investigate and evaluate new
 172 available safety and security technology, available and make
 173 periodic written recommendations to the secretary on the
 174 discontinuation or purchase of various safety and security

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175 devices.

176 (5)(f) Direct appropriate department staff to contract, if
 177 deemed necessary, with security personnel, consulting engineers,
 178 architects, or other safety and security experts the department
 179 committee deems necessary for safety and security audits and
 180 security consultant services.

181 (6)(g) Direct appropriate department staff, in conjunction
 182 with the regional offices, to establish a periodic schedule for
 183 conducting announced and unannounced escape simulation drills.

184 (7)(2) Direct appropriate department staff to maintain and
 185 produce quarterly reports with accurate escape statistics. For
 186 the purposes of these reports, the term "escape" includes all
 187 possible types of escape, regardless of prosecution by the state
 188 attorney, and includes including offenders who walk away from
 189 nonsecure community facilities.

190 (8)(3) Direct appropriate department staff to adopt,
 191 enforce, and annually evaluate the emergency escape response
 192 procedures, which must shall at a minimum include the immediate
 193 notification and inclusion of local and state law enforcement
 194 through a mutual aid agreement.

195 (9) Direct appropriate department staff to review staffing
 196 policies and practices as needed.

197 (10) Direct appropriate department staff to adopt and
 198 enforce minimum safety and security standards and policies that
 199 include, but are not limited to:

200 (a) Random monitoring of outgoing telephone calls by
 201 inmates.

202 (b) Maintenance of current photographs of all inmates.

203 (c) Daily inmate counts at varied intervals.

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204 (d) Use of canine units, where appropriate.205 (e) Use of escape alarms and perimeter lighting.

206 (f) Use of the Florida Crime Information Center and
 207 National Crime Information Center capabilities.

208 (g) Employment background investigations.

209 (11)(4) Direct appropriate department staff to submit in
 210 the annual legislative budget request a prioritized summary of
 211 critical safety and security deficiencies and repair and
 212 renovation security needs.

213 Section 3. Subsection (5) of section 944.17, Florida
 214 Statutes, is amended to read:

215 944.17 Commitments and classification; transfers.—

216 (5) The department shall also refuse to accept a person
 217 into the state correctional system unless the following
 218 documents are presented in a completed form by the sheriff or
 219 chief correctional officer, or a designated representative, to
 220 the officer in charge of the reception process. The department
 221 may, at its discretion, receive such documents electronically:

222 (a) The uniform commitment and judgment and sentence forms
 223 as described in subsection (4).

224 (b) The sheriff's certificate as described in s. 921.161.

225 (c) A certified copy of the indictment or information
 226 relating to the offense for which the person was convicted.

227 (d) A copy of the probable cause affidavit for each offense
 228 identified in the current indictment or information.

229 (e) A copy of the Criminal Punishment Code scoresheet and
 230 any attachments thereto prepared pursuant to Rule 3.701, Rule
 231 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or
 232 any other rule pertaining to the preparation of felony

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233 sentencing scoresheets.

234 (f) A copy of the restitution order or the reasons by the
235 court for not requiring restitution pursuant to s. 775.089(1).

236 (g) The name and address of any victim, if available.

237 (h) A printout of a current criminal history record as
238 provided through an FCIC/NCIC printer.239 (i) Any available health assessments including medical,
240 mental health, and dental, including laboratory or test
241 findings; custody classification; disciplinary and adjustment;
242 and substance abuse assessment and treatment information which
243 may have been developed during the period of incarceration
244 before ~~prior to~~ the transfer of the person to the department's
245 custody. Available information shall be transmitted on standard
246 forms developed by the department.

247

248 In addition, the sheriff or other officer having such person in
249 charge shall also deliver with the foregoing documents any
250 available presentence investigation reports as described in s.
251 921.231 and any attached documents. After a prisoner is admitted
252 into the state correctional system, the department may request
253 such additional records relating to the prisoner as it considers
254 necessary from the clerk of the court, the Department of
255 Children and Families, or any other state or county agency for
256 the purpose of determining the prisoner's proper custody
257 classification, gain-time eligibility, or eligibility for early
258 release programs. An agency that receives such a request from
259 the department must provide the information requested. The
260 department may, at its discretion, receive such information
261 electronically.

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262 Section 4. Paragraphs (b) and (d) of subsection (4) of
263 section 944.275, Florida Statutes, are amended, and paragraph
264 (f) is added to that subsection, to read:

265 944.275 Gain-time.—

266 (4)

267 (b) For each month in which an inmate works diligently,
268 participates in training, uses time constructively, or otherwise
269 engages in positive activities, the department may grant
270 incentive gain-time in accordance with this paragraph. The rate
271 of incentive gain-time in effect on the date the inmate
272 committed the offense which resulted in his or her incarceration
273 shall be the inmate's rate of eligibility to earn incentive
274 gain-time throughout the period of incarceration and shall not
275 be altered by a subsequent change in the severity level of the
276 offense for which the inmate was sentenced.277 1. For sentences imposed for offenses committed prior to
278 January 1, 1994, up to 20 days of incentive gain-time may be
279 granted. If granted, such gain-time shall be credited and
280 applied monthly.281 2. For sentences imposed for offenses committed on or after
282 January 1, 1994, and before October 1, 1995:283 a. For offenses ranked in offense severity levels 1 through
284 7, under former s. 921.0012 or former s. 921.0013, up to 25 days
285 of incentive gain-time may be granted. If granted, such gain-
286 time shall be credited and applied monthly.287 b. For offenses ranked in offense severity levels 8, 9, and
288 10, under former s. 921.0012 or former s. 921.0013, up to 20
289 days of incentive gain-time may be granted. If granted, such
290 gain-time shall be credited and applied monthly.

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291 3. For sentences imposed for offenses committed on or after
 292 October 1, 1995, the department may grant up to 10 days per
 293 month of incentive gain-time, ~~except that no prisoner is~~
 294 ~~eligible to earn any type of gain-time in an amount that would~~
 295 ~~cause a sentence to expire, end, or terminate, or that would~~
 296 ~~result in a prisoner's release, prior to serving a minimum of 85~~
 297 ~~percent of the sentence imposed. For purposes of this~~
 298 ~~subparagraph, credits awarded by the court for time physically~~
 299 ~~incarcerated shall be credited toward satisfaction of 85 percent~~
 300 ~~of the sentence imposed. Except as provided by this section, a~~
 301 ~~prisoner shall not accumulate further gain-time awards at any~~
 302 ~~point when the tentative release date is the same as that date~~
 303 ~~at which the prisoner will have served 85 percent of the~~
 304 ~~sentence imposed. State prisoners sentenced to life imprisonment~~
 305 ~~shall be incarcerated for the rest of their natural lives,~~
 306 ~~unless granted pardon or clemency.~~

307 (d) Notwithstanding the monthly maximum awards of incentive
 308 gain-time under subparagraphs (b)1., and 2., and 3., the
 309 education program manager shall recommend, and the Department of
 310 Corrections may grant, a one-time award of 60 additional days of
 311 incentive gain-time to an inmate who is otherwise eligible and
 312 who successfully completes requirements for and is, or has been
 313 during the current commitment, awarded a high school equivalency
 314 diploma or vocational certificate. Under no circumstances may an
 315 inmate receive more than 60 days for educational attainment
 316 pursuant to this section.

317 (f) An inmate who is subject to subparagraph (b)3. is not
 318 eligible to earn or receive gain-time under paragraph (a),
 319 paragraph (b), paragraph (c), or paragraph (d) or any other type

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320 of gain-time in an amount that would cause a sentence to expire,
 321 end, or terminate, or that would result in a prisoner's release,
 322 before serving a minimum of 85 percent of the sentence imposed.
 323 For purposes of this paragraph, credits awarded by the court for
 324 time physically incarcerated shall be credited toward
 325 satisfaction of 85 percent of the sentence imposed. Except as
 326 provided by this section, a prisoner may not accumulate further
 327 gain-time awards at any point when the tentative release date is
 328 the same as that date at which the prisoner will have served 85
 329 percent of the sentence imposed. State prisoners sentenced to
 330 life imprisonment shall be incarcerated for the rest of their
 331 natural lives, unless granted a pardon or clemency.

332 Section 5. Subsection (2) of section 944.597, Florida
 333 Statutes, is amended to read:

334 944.597 Transportation and return of prisoners by private
 335 transport company.—

336 (2) The department shall include, but ~~is shall~~ not be
 337 limited to, the following requirements in any contract with any
 338 transport company:

339 (a) That the transport company shall maintain adequate
 340 liability coverage with respect to the transportation of
 341 prisoners.†

342 (b) That the transport company shall require its employees
 343 to complete at least 100 hours of training before transporting
 344 prisoners. The curriculum for such training must be approved by
 345 the department and include instruction in:

346 1. Use of restraints;

347 2. Searches of prisoners;

348 3. Use of force, including use of appropriate weapons and

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349 firearms;350 4. Cardiopulmonary resuscitation;351 5. Map reading; and

352 6. Defensive driving. ~~personnel employed with the transport~~
 353 ~~company who are based in the state shall meet the minimum~~
 354 ~~standards in accordance with s. 943.13 and that personnel~~
 355 ~~employed with the transport company based outside of Florida~~
 356 ~~shall meet the minimum standards for a correctional officer or~~
 357 ~~law enforcement officer in the state where the employee is~~
 358 ~~based.~~

359 (c) That the transport company shall adhere to standards
 360 which provide for humane treatment of prisoners while in the
 361 custody of the transport company.

362 (d) That the transport company shall submit reports to the
 363 department regarding incidents of escape, use of force, and
 364 accidents involving prisoners in the custody of the transport
 365 company.

366 Section 6. Section 945.36, Florida Statutes, is amended to
 367 read:

368 945.36 Exemption from health testing regulations for law
 369 enforcement personnel conducting drug tests on inmates and
 370 releasees.-

371 (1) Any law enforcement officer, state or county probation
 372 officer, ~~or~~ employee of the Department of Corrections, or
 373 employee of a contracted community correctional center who is
 374 certified by the Department of Corrections pursuant to
 375 subsection (2), is exempt from part I of chapter 483, for the
 376 limited purpose of administering a urine screen drug test to:

377 (a) Persons during incarceration;

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378 (b) Persons released as a condition of probation for either
 379 a felony or misdemeanor;

380 (c) Persons released as a condition of community control;
 381 (d) Persons released as a condition of conditional release;
 382 (e) Persons released as a condition of parole;
 383 (f) Persons released as a condition of provisional release;
 384 (g) Persons released as a condition of pretrial release; or
 385 (h) Persons released as a condition of control release.

386 (2) The Department of Corrections shall develop a procedure
 387 for certification of any law enforcement officer, state or
 388 county probation officer, ~~or~~ employee of the Department of
 389 Corrections, or employee of a contracted community correctional
 390 center to perform a urine screen drug test on the persons
 391 specified in subsection (1).

392 Section 7. Section 958.11, Florida Statutes, is amended to
 393 read:

394 958.11 Designation of institutions and programs for
 395 youthful offenders; assignment from youthful offender
 396 institutions and programs.-

397 (1) The department shall by rule designate separate
 398 institutions and programs for youthful offenders and shall
 399 employ and utilize personnel specially qualified by training and
 400 experience to operate all such institutions and programs for
 401 youthful offenders. Youthful offenders who are at least 14 years
 402 of age but who have not yet reached the age of 18 ~~19~~ years at
 403 the time of reception shall be separated from ~~youthful~~ offenders
 404 who are 18 ~~19~~ years of age or older, ~~except that if the~~
 405 ~~population of the facilities designated for 14-year-old to 18-~~
 406 ~~year-old youthful offenders exceeds 100 percent of lawful~~

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407 ~~capacity, the department may assign 18-year-old youthful~~
 408 ~~offenders to the 19-24 age group facility.~~

409 (2) Youthful offender institutions and programs shall
 410 contain only those youthful offenders sentenced as such by a
 411 court or classified as such by the department, pursuant to the
 412 requirements of subsections (7) ~~(4)~~ and (9) ~~(6)~~, except that
 413 under special circumstances select adult offenders may be
 414 assigned to youthful offender institutions. All female youthful
 415 offenders ~~of all ages~~ may continue to be housed together at
 416 those institutions designated by department rule ~~until such time~~
 417 ~~as institutions for female youthful offenders are established or~~
 418 ~~adapted to allow for separation by age and to accommodate all~~
 419 ~~custody classifications.~~

420 (3) The department may assign a youthful offender who is 18
 421 years of age or older to a facility in the state correctional
 422 system which is not designated for the care, custody, control,
 423 and supervision of youthful offenders or an age group only in
 424 the following circumstances:

425 (a) If the youthful offender is convicted of a new crime
 426 that which is a felony under the laws of this state.

427 (b) If the youthful offender becomes such a serious
 428 management or disciplinary problem resulting from serious
 429 violations of the rules of the department that his or her
 430 original assignment would be detrimental to the interests of the
 431 program and to other inmates committed thereto.

432 (c) If the youthful offender needs medical treatment,
 433 health services, or other specialized treatment otherwise not
 434 available at the youthful offender facility.

435 (d) If the department determines that the youthful offender

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436 should be transferred outside of the state correctional system,
 437 as provided by law, for services not provided by the department.

438 (e) If bed space is not available in a designated community
 439 residential facility, the department may assign a youthful
 440 offender to a community residential facility, provided that the
 441 youthful offender is separated from other offenders insofar as
 442 is practical.

443 (4) The department may assign a youthful offender whose age
 444 does not exceed 17 years to an adult facility for medical or
 445 mental health reasons, for protective management, or for close
 446 management. The youthful offender shall be separated from
 447 offenders who are 18 years of age or older.

448 (5) ~~(f)~~ If the youthful offender was originally assigned to
 449 a facility designated for 14- to 17-year-old ~~14-year-old to 18-~~
 450 ~~year-old~~ youthful offenders, but subsequently reaches the age of
 451 18 ~~19~~ years, the department may retain the youthful offender in
 452 a the facility designated for 18- to 22-year-old youthful
 453 offenders if the department determines that it is in the best
 454 interest of the youthful offender and the department.

455 (6) If the youthful offender was originally assigned to a
 456 facility designated for 18- to 22-year-old youthful offenders,
 457 but subsequently reaches the age of 23 years, the department may
 458 retain the offender in the facility until the age of 25 if the
 459 department determines that it is in the best interest of the
 460 youthful offender and the department.

461 ~~(g) If the department determines that a youthful offender~~
 462 ~~originally assigned to a facility designated for the 19-24 age~~
 463 ~~group is mentally or physically vulnerable by such placement,~~
 464 ~~the department may reassign a youthful offender to a facility~~

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465 ~~designated for the 14-18 age group if the department determines~~
 466 ~~that a reassignment is necessary to protect the safety of the~~
 467 ~~youthful offender or the institution.~~

468 ~~(h) If the department determines that a youthful offender~~
 469 ~~originally assigned to a facility designated for the 14-18 age~~
 470 ~~group is disruptive, incorrigible, or uncontrollable, the~~
 471 ~~department may reassign a youthful offender to a facility~~
 472 ~~designated for the 19-24 age group if the department determines~~
 473 ~~that a reassignment would best serve the interests of the~~
 474 ~~youthful offender and the department.~~

475 (7)(4) The department shall continuously screen all
 476 institutions, facilities, and programs for any inmate who meets
 477 the eligibility requirements for youthful offender designation
 478 specified in s. 958.04(1)(a) and (c) whose age does not exceed
 479 24 years and whose total length of sentence does not exceed 10
 480 years, and the department may classify and assign as a youthful
 481 offender any inmate who meets the criteria of this subsection.

482 (8)(5) The department shall coordinate all youthful
 483 offender assignments or transfers and shall review and maintain
 484 access to full and complete documentation and substantiation of
 485 all such assignments or transfers of youthful offenders to or
 486 from facilities in the state correctional system which are not
 487 designated for their care, custody, and control, except
 488 assignments or transfers made pursuant to paragraph (3)(c).

489 (9)(6) The department may assign to a youthful offender
 490 facility any inmate, except a capital or life felon, whose age
 491 does not exceed 19 years but who does not otherwise meet the
 492 criteria of this section, if the department determines that such
 493 inmate's mental or physical vulnerability would substantially or

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494 materially jeopardize his or her safety in a nonyouthful
 495 offender facility. Assignments made under this subsection shall
 496 be included in the department's annual report.

497 Section 8. Paragraph (e) of subsection (1) of section
 498 921.002, Florida Statutes, is amended to read:

499 921.002 The Criminal Punishment Code.—The Criminal
 500 Punishment Code shall apply to all felony offenses, except
 501 capital felonies, committed on or after October 1, 1998.

502 (1) The provision of criminal penalties and of limitations
 503 upon the application of such penalties is a matter of
 504 predominantly substantive law and, as such, is a matter properly
 505 addressed by the Legislature. The Legislature, in the exercise
 506 of its authority and responsibility to establish sentencing
 507 criteria, to provide for the imposition of criminal penalties,
 508 and to make the best use of state prisons so that violent
 509 criminal offenders are appropriately incarcerated, has
 510 determined that it is in the best interest of the state to
 511 develop, implement, and revise a sentencing policy. The Criminal
 512 Punishment Code embodies the principles that:

513 (e) The sentence imposed by the sentencing judge reflects
 514 the length of actual time to be served, shortened only by the
 515 application of incentive and meritorious gain-time as provided
 516 by law, and may not be shortened if the defendant would
 517 consequently serve less than 85 percent of his or her term of
 518 imprisonment as provided in s. 944.275(4) ~~s. 944.275(4)(b)~~ 3. The
 519 provisions of chapter 947, relating to parole, shall not apply
 520 to persons sentenced under the Criminal Punishment Code.

521 Section 9. Section 947.149, Florida Statutes, is amended to
 522 read:

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523 947.149 Conditional medical release.—

524 (1) The commission shall, in conjunction with the
525 department, establish the conditional medical release program.
526 An inmate is eligible for supervised consideration for release
527 under the conditional medical release program when the inmate,
528 because of an existing medical or physical condition, is
529 determined by the department to be within one of the following
530 designations:

531 (a) "Inmate with a debilitating illness," which means an
532 inmate who is determined to be suffering from a significant and
533 permanent nonterminal condition, disease, or syndrome that has
534 rendered the inmate so physically or cognitively debilitated or
535 incapacitated as to create a reasonable probability that he or
536 she does not present any danger to society. He or she must have
537 served at least 50 percent of his or her sentence.

538 (b)(a) "Permanently incapacitated inmate," which means an
539 inmate who has a condition caused by injury, disease, or illness
540 which, to a reasonable degree of medical certainty, renders the
541 inmate permanently and irreversibly physically incapacitated to
542 the extent that the inmate does not constitute a danger to
543 herself or himself or others.

544 (c)(b) "Terminally ill inmate," which means an inmate who
545 has a condition caused by injury, disease, or illness which, to
546 a reasonable degree of medical certainty, renders the inmate
547 terminally ill to the extent that there can be no recovery and
548 death is imminent, so that the inmate does not constitute a
549 danger to herself or himself or others.

550 (2) To be eligible, an inmate must also be determined by
551 the department to meet all of the following criteria:

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552 (a) Has been convicted of a felony.

553 (b) Has no current or prior conviction for a capital or
554 first degree felony, for a sexual offense, or for an offense
555 involving a child.

556 (c) Has not received a disciplinary report within the
557 previous 6 months.

558 (d) Has never received a disciplinary report for a violent
559 act.

560 (e) Has renounced any gang affiliation.

561 (3)(2) Notwithstanding any provision to the contrary, any
562 person determined eligible under this section and sentenced to
563 the custody of the department shall may, upon referral by the
564 department and verification of eligibility by commission, be
565 placed on ~~considered for~~ conditional medical release by the
566 commission, in addition to any parole consideration for which
567 the inmate may be considered, except that conditional medical
568 release is not authorized for an inmate who is under sentence of
569 death.

570 (4) No inmate has a right to conditional medical release or
571 to a medical evaluation to determine eligibility for such
572 release.

573 (5) (a)(3) The commission has the authority and whether or
574 not to grant conditional medical release and establish
575 additional conditions of conditional medical release rests
576 solely within the discretion of the commission, in accordance
577 with the provisions of this section, together with the authority
578 to approve the release plan proposed by the department to
579 include necessary medical care and attention.

580 (b) The department shall identify inmates who may be

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581 eligible for conditional medical release based upon available
 582 medical information and shall refer them to the commission if
 583 they are eligible under this section for consideration. ~~In~~
 584 ~~considering an inmate for conditional medical release, the~~
 585 ~~commission may require that additional medical evidence be~~
 586 ~~produced or that additional medical examinations be conducted,~~
 587 ~~and may require such other investigations to be made as may be~~
 588 ~~warranted.~~

589 (c) The referral by the department to the commission must
 590 include the following information:

- 591 1. Proposed conditional medical release plan.
- 592 2. Any relevant medical history, including current medical
 593 prognosis.
- 594 3. Prison experience and criminal history. The criminal
 595 history must include all of the following:
 - 596 a. A claim of innocence, if any.
 - 597 b. The degree to which the inmate accepts responsibility
 598 for his or her acts leading to the conviction of the crime.
 - 599 c. How any claim of responsibility has affected the
 600 inmate's feelings of remorse.
 - 601 4. Any history of substance abuse and mental health issues.
 - 602 5. Any disciplinary action taken against the inmate while
 603 in prison.
 - 604 6. Any participation in prison work and other prison
 605 programs.
 - 606 7. Any other information deemed necessary by the
 607 department.

608 (d) In verifying eligibility of an inmate for conditional
 609 medical release, the commission shall review the information

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610 provided by the department.

611 (e) The commission must finish its verification of the
 612 eligibility of an inmate within 60 days after the department
 613 refers the inmate for conditional medical release.

614 ~~(6) (4)~~ The conditional medical release term of an inmate
 615 released on conditional medical release is for the remainder of
 616 the inmate's sentence, without diminution of sentence for good
 617 behavior. Supervision of the medical releasee must include
 618 periodic medical evaluations at intervals included in the
 619 recommended release plan and approved determined by the
 620 commission at the time of release. Supervision may also include
 621 electronic monitoring.

622 ~~(7) (a) (5) (a)~~ If it is discovered during the conditional
 623 medical release that the medical or physical condition of the
 624 medical releasee has improved to the extent that she or he would
 625 no longer be eligible for conditional medical release under this
 626 section, the commission may order that the releasee be returned
 627 to the custody of the department for a conditional medical
 628 release revocation hearing, in accordance with s. 947.141. If
 629 conditional medical release is revoked due to improvement in the
 630 medical or physical condition of the releasee, she or he shall
 631 serve the balance of her or his sentence with credit for the
 632 time served on conditional medical release and without
 633 forfeiture of any gain-time accrued prior to conditional medical
 634 release. If the person whose conditional medical release is
 635 revoked due to an improvement in medical or physical condition
 636 would otherwise be eligible for parole or any other release
 637 program, the person may be considered for such release program
 638 pursuant to law.

585-03377-17

20171604c2

639 (b) In addition to revocation of conditional medical
640 release pursuant to paragraph (a), conditional medical release
641 may also be revoked for violation of any condition of the
642 release established by the commission, in accordance with s.
643 947.141, and the releasee's gain-time may be forfeited pursuant
644 to s. 944.28(1).

645 (8)~~(6)~~ The department and the commission shall adopt rules
646 as necessary to implement the conditional medical release
647 program.

648 Section 10. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Banking and Insurance
Judiciary
Regulated Industries

SENATOR RANDOLPH BRACY

11th District

April 19, 2017

The Honorable Senator Latvala
201 The Capitol
402 South Monroe Street
Tallahassee, Florida 32399

Dear Chairman Latvala,

I respectfully request SB1604 be placed on the agenda for the Appropriations Committee at its next scheduled committee hearing. This bill is pertaining to the Department of Corrections and inmate medical records. This bill is a priority of the Department of Corrections and has been reported favorably out of the Criminal Justice Committee and Government Oversight and Accountability.

I thank you in advance for your consideration and should you have any further questions please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Randolph Bracy".

Senator Randolph Bracy
Senate District 11

Cc: Senator Flores, Vice Chair
Mike Hensen, Staff Director
Tim Sadberry, Deputy Staff Director
John Shettle, Deputy Staff Director
Alicia Weiss, Committee Administrative Assistant

REPLY TO:

- 150 N. Lakeshore Drive, Ocoee, Florida 34761 (407) 656-6716
- 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/17

Meeting Date

1604

Bill Number (if applicable)

Topic DOC

Amendment Barcode (if applicable)

Name JASON JONES

Job Title GENERAL COUNSEL

Address P.O. BOX 1489

Phone 850 410 7076

Street

TALCAHASSEE

City

FL

State

32302

Zip

Email JASONJONES@FDLE.STATE.FL.US

Speaking: For Against Information

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

Representing FDLE

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 Appropriations

BILL: CS/CS/SB 1726

INTRODUCER: Appropriations Committee; Agriculture Committee; and Senators Montford and Powell

SUBJECT: Industrial Hemp Pilot Projects

DATE: April 21, 2017 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Becker</u>	<u>AG</u>	Fav/CS
2.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1726 provides the Department of Agriculture and Consumer Services with authorization and oversight of the development of industrial hemp pilot projects at the University of Florida (UF) and the Florida Agricultural and Mechanical University (FAMU). UF and FAMU may develop pilot projects to cultivate, process, test, research, create, and market safe and effective commercial applications for industrial hemp in the agricultural sector of Florida. The bill also requires:

- Authorization from a university's board of trustees before the university may implement a pilot project;
- Pilot projects to comply with rules adopted by the Department of Agriculture and Consumer Services (department);
- Universities to establish guidelines for the approval, oversight, and enforcement of pilot project rules; and
- A report to be submitted to the Governor and the Legislature within 2 years after the pilot project's creation.

The bill has an indeterminate impact on state revenues and expenditures. See Section V. Fiscal Impact Statement for details.

The bill takes effect upon becoming law.

II. Present Situation:

Industrial hemp is a number of varieties of *cannabis sativa* L. that are intended for agricultural and industrial purposes. They are grown for their seed and fiber content as well as the resulting byproducts such as oil, seed cake, hurds, etc. Industrial hemp is characterized by being low in THC (delta-9 tetrahydrocannabinol) and high in CBD (cannabidiol). Industrial hemp is not marijuana. Even though they both come from *Cannabis sativa* L., the varieties that are used to make industrial hemp products (seed, fiber, etc.), and those that are used to make marijuana (flowering tops and leaves) are distinctly different. They are scientifically different and are cultivated in very different ways.¹ Currently, more than 30 nations grow industrial hemp as an agricultural commodity, which is sold on the world market.

In the United States, production of hemp is strictly controlled under existing drug enforcement laws. Currently there is no large-scale commercial production in the United States (U.S.), and the U.S. market depends on imports.² All cannabis varieties, including hemp used for fiber and marijuana that contain THC used as a drug, are classified as “Schedule 1 controlled substances” under the Controlled Substance Act.³

Following the enactment of the 2014 Farm Bill,⁴ hemp cultivation is now allowed under certain circumstances by research institutions and state departments of agriculture if:

- The industrial hemp is grown or cultivated for research conducted under an agricultural pilot program or other agricultural or academic research; and
- The growing or cultivating of industrial hemp is allowed under state law where the university or state department of agriculture is located.⁵

At least 30 states have passed legislation related to industrial hemp. Generally, states have taken three approaches: (1) establish industrial hemp research and/or pilot programs, (2) authorize studies of the industrial hemp industry, or (3) establish commercial industrial hemp programs. Some states establishing these programs require a change in federal laws or a waiver from the DEA prior to implementation.⁶

At least 16 states have legalized industrial hemp production for commercial purposes and 20 states have passed laws allowing research and pilot programs. Seven states—Colorado, Kentucky, Maryland, Minnesota, North Dakota, Rhode Island, and Virginia—have approved the creation of both pilot/research and commercial programs. Many of the states that have legalized hemp cultivation for commercial purposes specify that state law does not allow for violation of federal law. States including California, Indiana, Kentucky, Minnesota, Montana, and Virginia

¹ <http://www.industrialhemp.net/> (Last visited March 29, 2017).

² Congressional Research Service, *Hemp as an Agricultural Commodity*, CRS Report 7-5700 Mar. 10, 2017, at p. 7, available at <https://fas.org/sgp/crs/misc/RL32725.pdf> (Last visited March 29, 2017).

³ 21 U.S.C. §§801 et seq.; Title 21 C.F.R. Part 1308.11.

⁴ Agricultural Act of 2014, Pub. L. 113-79.

⁵ 7 U.S.C. § 5940.

⁶ <http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx> (Last visited March 29, 2017).

have established a framework for regulating commercial hemp but still consider hemp illegal outside of research programs unless federal law changes.⁷

III. Effect of Proposed Changes:

Section 1 creates s. 1004.4473, F.S., to provide the Department of Agriculture and Consumer Services with authorization and oversight of the development of industrial hemp pilot projects for the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida (UF) and the Florida Agricultural and Mechanical University (FAMU) to cultivate, process, test, research, create, and market safe and effective commercial applications for industrial hemp in rural areas of the state. This section:

- Provides the following definitions:
 - **Hemp material** to mean a substance containing hemp stems, leaves, fibers, seeds, extracts, oil, or any other substance derived or harvested from a species of the cannabis plant.
 - **Industrial hemp** to mean all parts and varieties of the cannabis sativa plant, cultivated or possessed by an approved grower under the pilot project, whether growing or not, which contain a tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.
 - **Industrial hemp pilot project** to mean a project that includes research of industrial hemp and any aspect of cultivation, harvesting, processing, market research, and sales of approved industrial hemp agricultural, industrial, and commercial products.
 - **Qualified program personnel** to mean a person who, or an employee of a company that, partners with the UF or the FAMU on a pilot project, is certified by the university, is 18 years of age or older, and has passed the required criminal background check.
 - **Qualified project partner** to mean a public, nonprofit, or private entity that has a principal place of business in Florida and, at a minimum, must:
 - Have access to a grow site and research facility located in Florida which is acceptable for the cultivation, processing, and manufacturing of industrial hemp and hemp products.
 - Submit a comprehensive business or research plan acceptable to the partnering university.
 - Provide proof of prior experience in the cultivation, processing, manufacturing, or research of medical marijuana or industrial hemp.
- Requires authorization from a university's board of trustees before the university may implement a pilot project. The pilot project must be registered with the Department of Agriculture and Consumer Services and must comply with rules adopted by the department.
- Requires the universities to establish guidelines for the approval, oversight, and enforcement of pilot project rules. A contact person must be identified who is responsible for oversight of the pilot project. Each university research office must adopt procedures and guidelines that meet specified minimum requirements to ensure the proper operation of the pilot project, the proper handling of hemp material and products, and compliance with state and federal law.
- Requires each university to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of its pilot project. The report must be prepared and submitted within two years after the pilot project's creation.

⁷ *Id.*

Section 2 provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Refer to Impact Statements below.

B. Private Sector Impact:

A producer would be required to obtain a non-native/invasive permit for a fee not to exceed \$50 and to pay quarterly \$50 inspection fees. The producer must also obtain a surety bond issued by a surety company admitted to do business in this state or a certificate of deposit, or other type of security, which provides a financial assurance of cost recovery for the removal of a planting.⁸

C. Government Sector Impact:

The Department of Agriculture and Consumer Services has indicated that, at this time, the number of producers that will be participating in the pilot projects is unknown, so the fiscal impact of the bill and the number of FTEs needed is difficult to estimate. Industrial hemp will fall under ch. 581.083, F.S., and rule 5B-57, F.A.C., concerning non-native and invasive plant species. The department will be authorized to issue a non-native/invasive special permit and to collect a fee not to exceed \$50. The department recommends quarterly inspections for the first year and anticipates that the number could be reduced once a producer has a proven track record of passed inspections. Under rule 5B-2.010, F.A.C., Special Inspection and Certification Fees, the department will be authorized to collect a \$50 inspection fee from producers.⁹

⁸ Analysis by the Department of Agriculture and Consumer Services for SB 1726 (March 9, 2017).

⁹ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1004.4473 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 for CS by Appropriations on April 20, 2017:

The committee substitute:

- Includes a definition for a “qualified project partner” to mean a public, nonprofit, or private entity that has a principal place of business in Florida and, at a minimum, must:
 - Have access to a grow site and research facility located in Florida which is acceptable for the cultivation, processing, and manufacturing of industrial hemp and hemp products.
 - Submit a comprehensive business or research plan acceptable to the partnering university.
 - Provide proof of prior experience in the cultivation, processing, manufacturing, or research of medical marijuana or industrial hemp.
- Provides the Department of Agriculture and Consumer Services with authorization and oversight of the pilot projects.
- Removes the prohibition on the pilot projects being funded with public funds.

CS by Agriculture on April 3, 2017:

The committee substitute:

- Expands the information that is required to comply with rules to be adopted by the Department of Agriculture and Consumer Services concerning pilot projects. Universities must also provide information on genetic research, ensuring that psychotropic compounds will not be synthesized; and
- Prohibits a pilot project implemented under this section to be funded with public funds.

- B. **Amendments:**

None.



862852

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 1004.4473, Florida Statutes, is created
to read:

1004.4473 Industrial hemp pilot projects.-

(1) The Department of Agriculture and Consumer Services
shall authorize and oversee the development of industrial hemp
pilot projects, and promulgate the rules governing such



862852

11 projects, for the Institute of Food and Agricultural Sciences at
12 the University of Florida and the Florida Agricultural and
13 Mechanical University. The Institute of Food and Agricultural
14 Sciences at the University of Florida and the Florida
15 Agricultural and Mechanical University may develop industrial
16 hemp pilot projects in partnership with public, nonprofit, and
17 private entities in accordance with this section and all
18 applicable state and federal laws. The purpose of the pilot
19 projects is to cultivate, process, test, research, create, and
20 market safe and effective commercial applications for industrial
21 hemp in the agricultural sector in this state.

22 (2) As used in this section, the term:

23 (a) "Hemp material" means a substance containing hemp
24 stems, leaves, fibers, seeds, extracts, oil, or any other
25 substance derived or harvested from a species of the cannabis
26 plant.

27 (b) "Industrial hemp" means all parts and varieties of the
28 cannabis sativa plant, cultivated or possessed by an approved
29 grower under the pilot project, whether growing or not, which
30 contain a tetrahydrocannabinol concentration that does not
31 exceed 0.3 percent on a dry-weight basis.

32 (c) "Industrial hemp pilot project" or "pilot project"
33 means a project that includes research of industrial hemp and
34 any aspect of cultivation, harvesting, processing, market
35 research, and sales of approved industrial hemp agricultural,
36 industrial, and commercial products.

37 (d) "Qualified program personnel" means a person who, or an
38 employee of a company, that, partners with the University of
39 Florida or the Florida Agricultural and Mechanical University on



862852

40 a pilot project, is certified by the university, is 18 years of
41 age or older, and has passed the required criminal background
42 check.

43 (e) "Qualified project partner" means a public, nonprofit,
44 or private entity that has a principal place of business in
45 this state and meets the requirements of subsection (3).

46 (3) A qualified project partner must, at a minimum, meet
47 all of the following requirements:

48 (a) Have access to a grow site and research facility
49 located in this state which is acceptable for the cultivation,
50 processing, and manufacturing of industrial hemp and hemp
51 products, as determined by the Department of Agriculture and
52 Consumer Services.

53 (b) Submit a comprehensive business or research plan
54 acceptable to the partnering university.

55 (c) Provide proof of prior experience in the cultivation,
56 processing, manufacturing, or research of medical marijuana or
57 industrial hemp, as determined by the Department of Agriculture
58 and Consumer Services.

59 (4) Each university must obtain the authorization of its
60 board of trustees before implementing an industrial hemp pilot
61 project. A pilot project authorized by a university must be
62 registered with the Department of Agriculture and Consumer
63 Services. The pilot project must comply with rules adopted by
64 the department, which must address safety, compliance, and
65 accountability and, at a minimum, must require the universities
66 to provide detailed information on the scope, design, and
67 objectives of the pilot project; information on personnel and
68 participants involved in the pilot project; facility locations



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69 and security; the chain of control of hemp material; the
70 economic impact of the pilot project on the state's agricultural
71 sector; genetic research, ensuring that psychotropic compounds
72 will not be synthesized; and compliance with state and federal
73 law. The rules shall be promulgated by the department no later
74 than October 31, 2018.

75 (5) Each university shall develop partnerships with
76 qualified project partners to attract experts and investors
77 experienced with industrial hemp research and the
78 commercialization of such projects.

79 (6) The universities' respective research offices shall
80 oversee the pilot projects and ensure compliance with department
81 rule. The offices must identify a contact person who is
82 responsible for oversight of the pilot project. Each university
83 research office shall adopt procedures and guidelines to ensure
84 the proper operation of the pilot project, the proper handling
85 of hemp material and products, compliance with state and federal
86 law, and the safety and security of the pilot project
87 facilities. At a minimum, the guidelines must meet all of the
88 following requirements:

89 (a) Designate the physical location, Global Positioning
90 System position, and map of the pilot project facility. Areas
91 within the facility must be designated as general access or
92 limited access. An area where hemp material is cultivated,
93 processed, stored, or packaged or where industrial hemp research
94 is conducted must be designated as limited access. Limited-
95 access areas must be restricted to entry by qualified program
96 personnel and authorized visitors accompanied at all times by
97 qualified program personnel. All other areas of the facility may



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98 be designated as general access and are open to authorized
99 visitors, regardless of whether accompanied by qualified program
100 personnel.

101 (b) Identify the qualified program personnel involved in
102 the pilot projects. The personnel must have successfully
103 completed a level 2 screening pursuant to s. 435.04. Owners and
104 employees of companies directly involved in the pilot projects
105 must comply with this requirement.

106 (c) Authorize the qualified program personnel to handle,
107 grow, cultivate, process, and manufacture hemp materials.

108 (d) Establish a testing program and protocols to ensure the
109 proper labeling of hemp material.

110 (e) Establish guidelines for attracting successful,
111 entrepreneurial, and experienced public and private investors
112 and partners who are interested in pursuing an industrial hemp
113 pilot project.

114 (7) Each university that implements an industrial hemp
115 pilot project shall submit a report to the Governor, the
116 President of the Senate, and the Speaker of the House of
117 Representatives on the status of its pilot project and any
118 research related to the cultivation, harvesting, processing, and
119 uses of industrial hemp. The report must be prepared and
120 submitted within 2 years after the pilot project's creation.

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

122
123 ===== T I T L E A M E N D M E N T =====

124 And the title is amended as follows:

125 Delete everything before the enacting clause
126 and insert:



862852

127 A bill to be entitled
128 An act relating to industrial hemp pilot projects;
129 creating s. 1004.4473, F.S.; authorizing the
130 Department of Agriculture and Consumer Services to
131 oversee the development of industrial hemp pilot
132 projects for the Institute of Food and Agricultural
133 Sciences at the University of Florida and the Florida
134 Agricultural and Mechanical University; authorizing
135 the universities to develop the pilot projects in
136 partnership with public, nonprofit, and private
137 entities; providing the purpose of the pilot projects;
138 defining terms; requiring each university to obtain
139 the authorization of its board of trustees before
140 implementing a pilot project; requiring pilot projects
141 to comply with rules adopted by the department;
142 requiring the department to adopt certain rules by a
143 specified date; requiring the universities to develop
144 partnerships with certain entities; requiring the
145 universities to establish guidelines for the approval,
146 oversight, and enforcement of pilot project rules;
147 requiring a report to the Governor and the Legislature
148 within a specified timeframe; providing an effective
149 date.

By the Committee on Agriculture; and Senators Montford and Powell

575-03319-17

20171726c1

A bill to be entitled

An act relating to industrial hemp pilot projects; creating s. 1004.4473, F.S.; authorizing specified state universities to develop industrial hemp pilot projects in partnership with public, nonprofit, and private entities; providing the purpose of the pilot projects; defining terms; requiring authorization from a university's board of trustees before the university may implement a pilot project; requiring pilot projects to comply with rules adopted by the Department of Agriculture and Consumer Services; providing requirements for such rules; requiring the specified state universities to develop partnerships with certain entities; requiring the universities to establish guidelines for the approval, oversight, and enforcement of pilot project rules; requiring a report to the Governor and the Legislature; prohibiting projects from being funded with public funds; providing an effective date.

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

Section 1. Section 1004.4473, Florida Statutes, is created to read:

1004.4473 Industrial hemp pilot projects.-

(1) The Institute of Food and Agricultural Sciences at the University of Florida and the Florida Agricultural and Mechanical University may develop industrial hemp pilot projects in partnership with public, nonprofit, and private entities in

Page 1 of 5

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

575-03319-17

20171726c1

accordance with this section and other state and federal laws. The purpose of these 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.

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

(a) "Hemp material" means a substance containing hemp stems, leaves, fibers, seeds, extracts, oil, or any other substance derived or harvested from a species of the cannabis plant.

(b) "Industrial hemp" means all parts and varieties of the cannabis sativa plant, cultivated or possessed by an approved grower under the pilot project, whether growing or not, which contain a tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

(c) "Industrial hemp pilot project" or "pilot project" means a project that includes research of industrial hemp and any aspect of cultivation, harvesting, processing, market research, and sales of approved industrial hemp agricultural, industrial, and commercial products.

(d) "Qualified program personnel" means a person who, or an employee of a company that, partners with the University of Florida or the Florida Agricultural and Mechanical University on a pilot project, is certified by the university, is 18 years of age or older, and has passed the required criminal background check.

(3) Each university must obtain the authorization of its board of trustees before implementing an industrial hemp pilot project. A pilot project authorized by a university must be

Page 2 of 5

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

575-03319-17

20171726c1

59 registered with the Department of Agriculture and Consumer
 60 Services. The pilot project must comply with rules adopted by
 61 the department, which must address safety, compliance, and
 62 accountability and, at a minimum, must require the universities
 63 to provide detailed information on the scope, design, and
 64 objectives of the pilot project; information on personnel and
 65 participants involved in the pilot project; facility locations
 66 and security; the chain of control of hemp material; the
 67 economic impact of the pilot project on the state's agricultural
 68 sector; genetic research, ensuring that psychotropic compounds
 69 will not be synthesized; and compliance with state and federal
 70 law.

71 (4) Each university shall develop partnerships with public,
 72 nonprofit, and private entities to attract experts and investors
 73 experienced with industrial hemp research and commercialization
 74 who invest in such projects.

75 (5) The universities' respective research offices shall
 76 oversee the pilot projects and ensure compliance with department
 77 rule. The offices must identify a contact person who is
 78 responsible for oversight of the pilot project. Each university
 79 research office shall adopt procedures and guidelines to ensure
 80 the proper operation of the pilot project, the proper handling
 81 of hemp material and products, compliance with state and federal
 82 law, and the safety and security of the pilot project
 83 facilities. At a minimum, the guidelines must meet all of the
 84 following requirements:

85 (a) Designate the physical location, Global Positioning
 86 System position, and map of the pilot project facility. Areas
 87 within the facility must be designated as general access or

575-03319-17

20171726c1

88 limited access. An area where hemp material is cultivated,
 89 processed, stored, or packaged or where industrial hemp research
 90 is conducted must be designated as limited access. Limited-
 91 access areas must be restricted to entry by qualified program
 92 personnel and authorized visitors accompanied at all times by
 93 qualified program personnel. All other areas of the facility may
 94 be designated as general access and are open to authorized
 95 visitors, regardless of whether accompanied by qualified program
 96 personnel.

97 (b) Identify the qualified program personnel involved in
 98 the pilot projects. The personnel must have successfully
 99 completed a level 2 screening pursuant to s. 435.04. Owners and
 100 employees of companies directly involved in the pilot projects
 101 must comply with this requirement.

102 (c) Authorize the qualified program personnel to handle,
 103 grow, cultivate, process, and manufacture hemp materials.

104 (d) Establish minimum security standards for the handling
 105 of industrial hemp, including:

106 1. Processing and disposal requirements for any waste that
 107 contains hemp material.

108 2. Storage, testing, research, and transportation
 109 requirements for hemp material.

110 3. Packaging, labeling, and tracking requirements for hemp
 111 material.

112 (e) Establish a testing program and protocols to ensure the
 113 proper labeling of hemp material.

114 (f) Establish guidelines for attracting successful,
 115 entrepreneurial, and experienced public and private investors
 116 and partners who are interested in pursuing an industrial hemp

575-03319-17

20171726c1

117 pilot project with either university.

118 (6) Each university that implements an industrial hemp
119 pilot project shall submit a report to the Governor, the
120 President of the Senate, and the Speaker of the House of
121 Representatives on the status of its pilot project and any
122 research related to the cultivation, harvesting, processing, and
123 uses of industrial hemp. The report must be prepared and
124 submitted within 2 years after the pilot project's creation.

125 (7) A project implemented under this section may not be
126 funded with public funds.

127 Section 2. 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)

4/19/17
Meeting Date

SB 1726
Bill Number (if applicable)

[Barcode]
Amendment Barcode (if applicable)

Topic INDUSTRIAL HEMP

Name JEFF STROCK

Job Title CEO, THE PRESIDENT

Address 100 E. COLLEGE AVE

Phone 888 224 1600

Street
TH E 32201
City State Zip

Email JEFFSTROCK@THC.COM

Speaking: For Against Information

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

Representing MEDICAL MARIJUANA BUSINESS 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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4-20-2017
Meeting Date

1726
Bill Number (if applicable)

Topic Industrial Hemp

862852
Amendment Barcode (if applicable)

Name Dr. Latresia Wilson

Job Title VP

Address 3330 NW 2nd Ave
Street

Phone 352-425-5676

Orlando FL 32835
City State Zip

Email law@wilton2.com

Speaking: For Against Information

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

Representing Florida Black Farmers & Agriculturalists Assn

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)

4/20/17

Meeting Date

1726

Bill Number (if applicable)

862852

Amendment Barcode (if applicable)

Topic INDUSTRIAL HEMP PILOT PROJECTS

Name ROBERT F. CLAYTON

Job Title ENGINEER

Address 519 TRIPLETT ST Street

Phone 727-512-7771

JARVIS SPRINGS FL 34689 City State Zip

Email rfcclayton@centurylink.net

Speaking: For Against Information

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

Representing HEMP INDUSTRIES 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/20/17

Meeting Date

1726

Bill Number (if applicable)

Topic Industrial Hemp

Amendment Barcode (if applicable)

Name DAVID HASENAUER

Job Title CEO

Address 914 Railroad Ave

Phone (772) 360-7768

Street

Tallahassee FL 32301

City

State

Zip

Email David@greenpointconsultants.com

Speaking: For Against Information

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

Representing Green Point Consultants

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)

4-20-17

Meeting Date

1726

Bill Number (if applicable)

862852

Amendment Barcode (if applicable)

Topic Hemp - Experience / Colleges

Name Jodi James

Job Title Executive Director

Address 1375 Cypress Ave
Street

Phone 321 890 7302

Melbourne, FL 32935
City State Zip

Email jamesoflorida@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.

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 Appropriations

BILL: CS/CS/SB 1210

INTRODUCER: Appropriations Committee; Education Committee; and Senator Lee and others

SUBJECT: Instructional Materials for K-12 Public Education

DATE: April 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	Fav/CS
2.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1210 revises provisions relating to the definition and acquisition of instructional materials. Specifically, the bill:

- Defines “legal resident” or “resident” to mean a person who has maintained his or her legal residence in the state for the preceding year, has purchased a home that is occupied by him or her as his or her residence, or has established a domicile in this state pursuant to Florida law.
- Requires a district school board to adopt a policy regarding the right of a parent or legal resident of the county to object to the use of an instructional material based on specified criteria or contest the district school boards’ adoption of specific instructional materials.
- Revises the review process for district school boards that implement their own instructional materials review program.
- Requires district school board, upon a written request, to provide access to any instructional material or book specified in the written request, which is maintained in a district school system library and is available for review.
- Removes the requirement for school districts to purchase digital or electronic instructional material with the instructional materials allocation.

The bill has no impact on state revenues or expenditures.

The bill takes effect upon becoming law.

II. Present Situation:

The district school board has the constitutional duty and responsibility to select and provide adequate instructional materials for all students in accordance with Florida law.¹

District School Board Responsibility

A school district must provide adequate instructional materials for its students, ensure the materials are consistent with the district's educational goals, and ensure the materials meet the objectives and the curriculum frameworks adopted by the State Board of Education (SBE).² Florida law defines "adequate instructional materials" to mean a sufficient number of student or site licenses or sets of materials that are available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked books, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software that serve as a basis for instruction for each student in the core subject areas³.⁴

Each district school board is responsible for the content of all instructional materials used in a classroom, whether adopted or purchased from the state-adopted instructional materials list, adopted or purchased through a district instructional materials project, or otherwise purchased or made available in the classroom.⁵

Each district school board must establish a process, as specified in law, by which the parent of a public school student may contest the district school board's adoption of specific instructional material.⁶ The decision of the district school board, after convening a public hearing on the issue, is final.⁷

The district school board is authorized to implement an instructional materials program that includes the review, recommendation, adoption, and purchase of materials.⁸ If a district school board chooses to implement its own instructional materials program, the school board must adopt rules implementing the program that include its processes, criteria, and requirements for:⁹

- Selection of reviewers, one or more of whom must be parents with children in public schools.
- Review of instructional materials, including a thorough review of curriculum content.
- Reviewer recommendations.
- District school board adoption.
- Purchase of materials.

¹ Section 1006.28(1)

² Section 1006.28(1) and 1001.03(1), F.S.

³ The core subject areas include mathematics, language arts, social studies, science, reading, and literature. Section 1006.28(1)

⁴ *Id.*

⁵ *Id.* at (1)(a)(1).

⁶ *Id.*

⁷ *Id.*

⁸ Section 1006.283(1).

⁹ *Id.* at (2).

Additionally, the district school superintendent must certify to the DOE on an annual basis that all instructional materials for core courses used by the district are aligned with applicable state standards.¹⁰

State Instructional Materials Reviewers and Content

The Commissioner must determine annually the areas in which instructional materials will be submitted for adoption and the number of titles in each area.¹¹ The Commissioner must appoint three state or national experts in the content areas submitted for adoption to review the instructional materials.¹²

Reviewers must evaluate all materials submitted by publishers in each adoption to determine if the material aligns with the applicable state standards, developed criteria, and any applicable performance standards.¹³

In addition to the standards, materials should also reflect appropriate diversity, include the Constitution and the Declaration of Independence in the social studies content area, and ensure that materials do not reflect unfairly upon people because of their race, color, creed, national origin, ancestry, gender, or occupation.¹⁴ Reviewers must report to the DOE the materials being recommended that meet the guidelines for adoption.¹⁵

Instructional Materials Allocation

The Commissioner of Education must annually certify to each district school superintendent the estimated allocated of state funds for instructional materials. The district is required to purchase current instructional materials in the core areas to provide students with current tools of instruction.¹⁶ This purchase must be made within the first three years of the effective date of the adoption cycle.¹⁷ Up to fifty percent of the allocation may be used to purchase non-adopted materials.¹⁸

III. Effect of Proposed Changes:

The bill revises provisions relating to the definition and acquisition of instructional materials. Specifically, the bill:

- Defines “legal resident” or “resident” to mean a person who has maintained his or her legal residence in the state for the preceding year, has purchased a home that is occupied by him or her as his or her residence, or has established a domicile in this state pursuant to Florida law.

¹⁰ *Id.* at (1).

¹¹ Section 1006.29(1)(a), F.S.

¹² *Id.* at (b).

¹³ Section 1006.31(2)(e), F.S.

¹⁴ *Id.* at (2)(d), F.S.

¹⁵ *Id.* at (3).

¹⁶ Section 1006.40(2), F.S.

¹⁷ *Id.*

¹⁸ *Id.* at (3)(b).

- Requires a district school board to adopt a policy regarding the right of a parent or legal resident of the county to object to the use of an instructional material based on specified criteria or contest the district school boards' adoption of specific instructional materials.
- Revises the review process for district school boards that implement their own instructional materials review program.
- Requires district school board, upon a written request, to provide access to any instructional material or book specified in the written request, which is maintained in a district school system library and is available for review.
- Removes the requirement for school districts to purchase digital or electronic instructional materials with the instructional materials allocation.

Instructional Materials Definition (Section 1)

Section 1 amends s. 1006.28, F.S., relating to the duties of the district school board, to adopt the definition of "instructional materials" contained in s. 1006.29(2), F.S., relating to the state review of instructional materials. "Instructional materials" is defined to mean items having intellectual content that by design serve as a major tool for assisting in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software.

Local Instructional Material Review (Sections 1 and 2)

Section 1 requires a district school board to adopt a policy regarding the right of a parent or county resident to object to the use of an instructional material. This process must provide the parent or resident the opportunity to offer evidence to the district school board that:

- The instructional material does not meet criteria specified in law if it was selected for use in a course or otherwise made available to students in the school district but was not subject to the required public notice, review, comment, and hearing procedures.
- Any material used in a classroom, made available in a school library, or included on a reading list contains content that is pornographic or prohibited under Florida law, is not suited to student needs and their ability to comprehend the material presented, or is inappropriate for the grade level and age group for which the material is used.

This section also requires that such process must include the right to timely appeal any district decision to adopt specific instructional materials to the district school board making appropriate provision for appointment of unbiased and qualified hearing officers. Accordingly, the bill provides for public input in the use and adoption of instructional material at the local level.

Section 2 amends s. 1006.283, F.S., to require an instructional materials review committee to report directly to the school board and be subject to public meeting requirements in s. 286.011, F.S. As such, meetings of an instructional materials review committee are open to the public to the same extent as a district school board meeting. Additionally, this section requires that at least one-third of reviewers must be parents with children in public schools who are not and have not been employees of the district. Accordingly, this section provides for more parent input if the district school board implements an instructional materials process.

State Instructional Materials Review (Section 3)

Section 3 amends 1006.31, F.S., to clarify that instructional reviewers under both the state approval process and the district approval process are required to use the selection criteria enumerated in this bill and recommend only those materials aligned with the Next Generation Sunshine State Standard.

Instructional Materials Allocation (Section 4)

Section 4 amends s. 1006.40, F.S., to remove the requirement for each district school board that utilizes the state instructional materials adoption process to purchase digital or electronic instructional materials, but retains the requirement of using at least 50 percent of the annual instructional materials allocation for the purchase of materials that align with state standards and that are included on the state-adopted list.

Sections 5 and 6 amend ss. 1002.20 and 1006.42, F.S., respectively, to correct cross-references.

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.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has no impact on state revenues or expenditures. The instructional materials allocation is funded as a categorical appropriation through the Florida Educational

Finance Program (FEFP).¹⁹ The legislature appropriated \$228,792,422 in the 2016-2017 General Appropriations Act.²⁰

VI. Technical Deficiencies:

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1006.28, 1006.283, 1006.31, 1006.40, 1002.20, and 1006.42.

IX. Additional Information:

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

CS/CS by Appropriations on April 20, 2017:

The committee substitute reverts to existing statutory language requiring a school district to use at least 50 percent of the instructional materials allocation on state-adopted instructional materials rather than using the allocation only for state-adopted instructional materials.

CS by Education on March 27, 2017:

The committee substitute:

- Requires, upon a written request, a school district to provide access to any instructional material or book specified in the request which is maintained in a district school system library and is available for review. Requires a school district to provide access to instructional materials 30 days after receipt of the written request.
- Removes reference to school districts' authority to lease, license, or obtain instructional materials by school districts from the state-adopted instructional materials list.
- Specifies that except for a school district or a consortium of school districts that implements an instructional materials program, each district school board must use the annual allocation for only the purchase of instructional materials that align with state standards and that are included on the state-adopted list.
- Removes the requirement that a school district review the instructional materials purchased by the school district from the state-adopted list.
- Modifies the policy for school districts to handle objections raised by a parent or a county resident to include the opportunity for such individuals to offer evidence supporting such objections to the district school board.
- Provides procedural safeguards for all petitions contesting the adoption of specific instructional materials that are timely received.

¹⁹ Section 1, ch. 2016-66, L.O.F.

²⁰ *Id.*

- Modifies the use of up to 50 percent of the annual allocation to specify uses including library and reference books and nonprint materials, hardback and softback books, repair and renovation of textbooks, etc.

B. Amendments:

None.

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



822152

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Lee) recommended the following:

Senate Amendment

Delete lines 324 - 325
and insert:
~~fiscal year~~, each district school board shall use at least 50
percent of the annual allocation for the purchase of

By the Committee on Education; and Senators Lee, Mayfield,
Steube, Hutson, Artiles, and Bean

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20171210c1

1 A bill to be entitled
2 An act relating to instructional materials for K-12
3 public education; amending s. 1006.28, F.S.; revising
4 the term "adequate instructional materials"; defining
5 terms; requiring each district school board to adopt a
6 process allowing parents or residents of the county to
7 object to the use of specific instructional materials
8 based on specified criteria; requiring the process to
9 include a right to appeal a school district decision;
10 specifying the appeal process; deleting a provision
11 relating to the finality of the school board's
12 decision under certain circumstances; requiring that
13 district school boards provide parents and residents
14 of the county access to certain materials under
15 certain circumstances; amending s. 1006.283, F.S.;
16 revising the requirements for school boards that adopt
17 rules for the implementation of the district's
18 instructional materials program; conforming provisions
19 to changes made by the act; amending s. 1006.31, F.S.;
20 revising the standards that an instructional materials
21 reviewer shall use; amending s. 1006.40, F.S.;
22 revising requirements for use of the instructional
23 materials allocation; revising the types of
24 instructional materials for which a district school
25 board is responsible; revising applicability; amending
26 ss. 1002.20 and 1006.42, F.S.; conforming cross-
27 references; providing an effective date.
28
29 Be It Enacted by the Legislature of the State of Florida:

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30
31 Section 1. Present subsections (1), (2), and (3) of section
32 1006.28, Florida Statutes, are redesignated as subsections (2),
33 (3), and (4), respectively, a new subsection (1) is added to
34 that section, and present subsection (1) and paragraph (a) of
35 present subsection (2), are amended, to read:
36 1006.28 Duties of district school board, district school
37 superintendent; and school principal regarding K-12
38 instructional materials.—
39 (1) DEFINITIONS.—As used in this section, the term:
40 (a) "Adequate instructional materials" means instructional
41 materials that meet the requirements of this section and have a
42 sufficient number of student or site licenses or sets of
43 materials that are available in bound, unbound, kit, or package
44 form and may consist of hardbacked or softbacked textbooks,
45 electronic content, consumables, learning laboratories,
46 manipulatives, electronic media, and computer courseware or
47 software to serve as the basis for instruction for each student
48 in the core subject areas of mathematics, language arts, social
49 studies, science, reading, and literature.
50 (b) "Instructional materials" has the same meaning as in s.
51 1006.29(2).
52 (c) "Legal resident" or "resident" means a person who has
53 maintained his or her residence in this state for the preceding
54 year, has purchased a home that is occupied by him or her as his
55 or her residence, or has established a domicile in this state
56 pursuant to s. 222.17.
57 (2) ~~(1)~~ DISTRICT SCHOOL BOARD.—The district school board has
58 the constitutional duty and responsibility to select and provide

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59 adequate instructional materials for all students in accordance
 60 with the requirements of this part. ~~The term "adequate~~
 61 ~~instructional materials" means a sufficient number of student or~~
 62 ~~site licenses or sets of materials that are available in bound,~~
 63 ~~unbound, kit, or package form and may consist of hardbacked or~~
 64 ~~softbacked textbooks, electronic content, consumables, learning~~
 65 ~~laboratories, manipulatives, electronic media, and computer~~
 66 ~~courseware or software that serve as the basis for instruction~~
 67 ~~for each student in the core subject areas of mathematics,~~
 68 ~~language arts, social studies, science, reading, and literature.~~
 69 The district school board also has the following specific duties
 70 and responsibilities:

71 (a) *Courses of study; adoption.*—Adopt courses of study,
 72 including instructional materials, for use in the schools of the
 73 district.

74 1. Each district school board is responsible for the
 75 content of all instructional materials used in a classroom,
 76 whether adopted and purchased from the state-adopted
 77 instructional materials list or, adopted and purchased through a
 78 district instructional materials program under s. 1006.283, ~~or~~
 79 ~~otherwise purchased or made available in the classroom.~~

80 2. Each district school board shall must adopt a policy
 81 regarding an objection by a parent or a resident of the county a
 82 ~~parent's objection to the his or her child's~~ use of a specific
 83 instructional material, which clearly describes a process to
 84 handle all objections and provides for resolution. The process
 85 must provide the parent or resident the opportunity to offer
 86 evidence to the district school board that:

87 a. An instructional material does not meet the criteria of

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88 s. 1006.31(2) if it was selected for use in a course or
 89 otherwise made available to students in the school district but
 90 was not subject to the public notice, review, comment, and
 91 hearing procedures under s. 1006.283(2)(b)8., 9., and 11.

92 b. Any material used in a classroom, made available in a
 93 school library, or included on a reading list contains content
 94 that is pornographic or prohibited under s. 847.012, is not
 95 suited to student needs and their ability to comprehend the
 96 material presented, or is inappropriate for the grade level and
 97 age group for which the material is used.

98
 99 If the district school board finds that an instructional
 100 material does not meet the criteria under sub-subparagraph a. or
 101 that any other material contains prohibited content under sub-
 102 paragraph b., the school district shall discontinue use of
 103 the material for any grade level or age group for which such use
 104 is inappropriate or unsuitable. The process must also include a
 105 right to timely appeal any district decision to the district
 106 school board.

107 3. Each district school board shall must establish a
 108 process by which the parent of a public school student or a
 109 resident of the county may contest the district school board's
 110 adoption of a specific instructional material. The parent or
 111 resident must file a petition, on a form provided by the school
 112 board, within 30 calendar days after the adoption of the
 113 material by the school board. The school board must make the
 114 form available to the public and publish the form on the school
 115 district's website. The form must be signed by the parent or
 116 resident, include the required contact information, and state

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117 the objection to the instructional material, based on the
 118 criteria of s. 1006.31(2). Within 30 days after the 30-day
 119 period has expired, the school board must, for all petitions
 120 timely received, conduct at least one open public hearing on all
 121 petitions timely received, providing at a minimum the procedural
 122 safeguards of ss. 120.569 and 120.57 making appropriate
 123 provision for appointment of unbiased and qualified hearing
 124 officers. A hearing officer may not be an employee, agent, or
 125 contractor of the school district and provide the petitioner
 126 written notification of the date and time of the hearing at
 127 least 7 days before the hearing. all instructional materials
 128 contested must be made accessible online to the public at least
 129 7 days before a public hearing.

130
 131 The school board's decision after convening a hearing is final
 132 and not subject to further petition or review.

133 (b) *Instructional materials.*—Provide for proper
 134 requisitioning, distribution, accounting, storage, care, and use
 135 of all instructional materials and furnish such other
 136 instructional materials as may be needed. Instructional
 137 materials used must be consistent with the district goals and
 138 objectives and the course descriptions established in rule of
 139 the State Board of Education, ~~as well as~~ with the applicable
 140 Next Generation Sunshine State Standards provided for in s.
 141 1003.41.

142 (c) *Other instructional materials.*—Provide such other
 143 teaching accessories and aids as are needed for the school
 144 district's educational program.

145 (d) *School library media services; establishment and*

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146 *maintenance.*—Establish and maintain a program of school library
 147 media services for all public schools in the district, including
 148 school library media centers, or school library media centers
 149 open to the public, and, in addition such traveling or
 150 circulating libraries as may be needed for the proper operation
 151 of the district school system. Within 30 days after receiving a
 152 written request, a school district shall provide access to any
 153 instructional material or book specified in the request which is
 154 maintained in a district school system library and is available
 155 for review.

156 (3) ~~(2)~~ DISTRICT SCHOOL SUPERINTENDENT.—

157 (a) The district school superintendent has the duty to
 158 recommend such plans for improving, providing, distributing,
 159 accounting for, and caring for instructional materials and other
 160 instructional aids as will result in general improvement of the
 161 district school system, as prescribed in this part, in
 162 accordance with adopted district school board rules prescribing
 163 the duties and responsibilities of the district school
 164 superintendent regarding the requisition, purchase, receipt,
 165 storage, distribution, use, conservation, records, and reports
 166 of, and management practices and property accountability
 167 concerning, instructional materials, and providing for an
 168 evaluation of any instructional materials to be requisitioned
 169 that have not been used previously in the district's schools.
 170 The district school superintendent shall ~~must~~ keep adequate
 171 records and accounts for all financial transactions for funds
 172 collected pursuant to subsection (4) ~~(3)~~.

173 Section 2. Subsections (1), (2), and (4) of section
 174 1006.283, Florida Statutes, are amended to read:

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175 1006.283 District school board instructional materials
 176 review process.—
 177 (1) A district school board or consortium of school
 178 districts may implement an instructional materials program that
 179 includes the review, recommendation, adoption, and purchase of
 180 instructional materials pursuant to the requirements of this
 181 section. The district school superintendent shall certify to the
 182 department by March 31 of each year that all instructional
 183 materials for core courses used by the district are aligned with
 184 applicable state standards. A list of the core instructional
 185 materials that will be used or purchased for use by the school
 186 district shall be included in the certification.
 187 (2) (a) If a district school board chooses to implement its
 188 own instructional materials program, the school board shall
 189 adopt rules implementing the district's instructional materials
 190 program which must include its processes, criteria, and
 191 requirements for the following:
 192 1. Selection of reviewers, at least one-third ~~one or more~~
 193 of whom must be parents with children in public schools who are
 194 not and have not been employees of the district.
 195 2. Review of instructional materials.
 196 3. Selection of instructional materials, including a
 197 thorough review of curriculum content.
 198 4. Reviewer recommendations.
 199 5. District school board adoption.
 200 6. Purchase of instructional materials.
 201 7. Use of an instructional materials review committee that
 202 is subject to s. 286.011 and that is selected by and reports
 203 directly to the district school board.

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204 (b) District school board rules shall ~~must~~ also:
 205 1. Identify, by subject area, a review cycle for
 206 instructional materials.
 207 2. Specify the qualifications for an instructional
 208 materials reviewer and the process for selecting reviewers; list
 209 a reviewer's duties and responsibilities, including compliance
 210 with the requirements of s. 1006.31; and provide that all
 211 instructional materials recommended by a reviewer be accompanied
 212 by the reviewer's statement that the materials align with the
 213 state standards pursuant to s. 1003.41 ~~and the requirements of~~
 214 ~~s. 1006.31~~.
 215 3. State the requirements for an affidavit to be made by
 216 each district instructional materials reviewer which
 217 substantially meet the requirements of s. 1006.30.
 218 4. Comply with s. 1006.32, relating to prohibited acts.
 219 5. Establish a process that certifies the accuracy of
 220 instructional materials.
 221 6. Incorporate applicable requirements of s. 1006.31, which
 222 relates to the duties of instructional materials reviewers.
 223 7. Incorporate applicable requirements of s. 1006.38,
 224 relating to the duties, responsibilities, and requirements of
 225 publishers of instructional materials.
 226 8. Establish the process by which instructional materials
 227 are adopted by the district school board, which must include:
 228 a. A process to allow student editions of recommended
 229 instructional materials to be accessed and viewed online by the
 230 public at least 20 calendar days before the school board hearing
 231 and public meeting as specified in this subparagraph. This
 232 process must include reasonable safeguards against the

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233 unauthorized use, reproduction, and distribution of
 234 instructional materials considered for adoption.

235 b. An open, noticed school board hearing to receive public
 236 comment on the recommended instructional materials.

237 c. An open, noticed public meeting to approve an annual
 238 instructional materials plan to identify any instructional
 239 materials that will be purchased through the district school
 240 board instructional materials review process pursuant to this
 241 section. The district school board shall hold this public
 242 meeting ~~must be held~~ on a different date than the school board
 243 hearing.

244 d. Notice requirements for the school board hearing and the
 245 public meeting that must specifically state which instructional
 246 materials are being reviewed and the manner in which the
 247 instructional materials can be accessed for public review.

248 9. Establish the process by which the district school board
 249 shall receive public comment on, and review, the recommended
 250 instructional materials.

251 10. Establish the process by which instructional materials
 252 are will be purchased, including advertising, bidding, and
 253 purchasing requirements.

254 11. Establish the process by which the school district
 255 notifies will notify parents and residents of the county of
 256 their ability to access ~~their children's~~ instructional materials
 257 through the district's local instructional improvement system
 258 and by which the school district will encourage parents and
 259 residents of the county to access the system. This notification
 260 must be displayed prominently on the school district's website
 261 and provided annually in written format to all parents of

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262 enrolled students.

263 (4) Instructional materials that have been reviewed by the
 264 district instructional materials reviewers and approved shall be
 265 ~~must have been~~ determined to align with all applicable state
 266 standards pursuant to s. 1003.41 ~~and the requirements in s.~~
 267 ~~1006.31~~. The district school superintendent shall annually
 268 certify to the department that all instructional materials for
 269 core courses used by the district are aligned with all
 270 applicable state standards and have been reviewed, selected, and
 271 adopted by the district school board in accordance with ~~the~~
 272 ~~school board hearing and public meeting requirements of this~~
 273 section.

274 Section 3. Subsection (2) of section 1006.31, Florida
 275 Statutes, is amended to read:

276 1006.31 Duties of the Department of Education and school
 277 district instructional materials reviewer.—The duties of the
 278 instructional materials reviewer are:

279 (2) EVALUATION OF INSTRUCTIONAL MATERIALS.—To use the
 280 selection criteria listed in s. 1006.34(2)(b) for instructional
 281 materials reviewers under a state approval process or for
 282 instructional materials reviewers under a district approval
 283 process under s. 1006.283 and recommend for adoption only those
 284 instructional materials that are aligned with the Next
 285 Generation Sunshine State Standards provided for in s. 1003.41.
 286 Instructional materials recommended by each reviewer shall be,
 287 to the satisfaction of each reviewer, accurate, objective,
 288 balanced, noninflammatory, ~~current~~, and suited to student needs
 289 and their ability to comprehend the material presented.
 290 Reviewers shall consider for recommendation materials developed

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291 for academically talented students, such as students enrolled in
292 advanced placement courses. When recommending instructional
293 materials, each reviewer shall:

294 (a) Include only instructional materials that accurately
295 portray the ethnic, socioeconomic, cultural, religious,
296 physical, and racial diversity of our society, including men and
297 women in professional, career, and executive roles, and the role
298 and contributions of the entrepreneur and labor in the total
299 development of this state and the United States.

300 (b) Include only materials that accurately portray,
301 whenever appropriate, humankind's place in ecological systems,
302 including the necessity for the protection of our environment
303 and conservation of our natural resources and the effects on the
304 human system of the use of tobacco, alcohol, controlled
305 substances, and other dangerous substances.

306 (c) Include materials that encourage thrift, fire
307 prevention, and humane treatment of people and animals.

308 (d) Require, when appropriate to the comprehension of
309 students, that materials for social science, history, or civics
310 classes contain the Declaration of Independence and the
311 Constitution of the United States. A reviewer may not recommend
312 any instructional materials that contain any matter reflecting
313 unfairly upon persons because of their race, color, creed,
314 national origin, ancestry, gender, religion, disability,
315 socioeconomic status, or occupation.

316 Section 4. Subsections (3), (5), and (8) of section
317 1006.40, Florida Statutes, are amended to read:

318 1006.40 Use of instructional materials allocation;
319 instructional materials, library books, and reference books;

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320 repair of books.—

321 (3) (a) Except for a school district or a consortium of
322 school districts that implements an instructional materials
323 program pursuant to s. 1006.283 ~~Beginning with the 2015-2016~~
324 ~~fiscal year~~, each district school board shall use ~~at least 50~~
325 ~~percent of~~ the annual allocation for only the purchase of
326 ~~digital or electronic~~ instructional materials that align with
327 state standards and that are included on the state-adopted list,
328 except as otherwise authorized in paragraphs (b) and (c).

329 (b) Up to 50 percent of the annual allocation may be used
330 for:

331 1. The purchase of instructional materials, including
332 library and reference books and nonprint materials; ~~not~~
333 ~~included on the state-adopted list and for the repair and~~
334 ~~renovation of textbooks and library books.~~

335 2. The purchase of materials that are not provided under
336 subparagraph 1. and that have intellectual content that assist
337 in the instruction of a subject or course. These materials may
338 be available in bound, unbound, kit, or package form and may
339 consist of hardbacked or softbacked textbooks, novels,
340 electronic content, consumables, learning laboratories,
341 manipulatives, electronic media, computer courseware or
342 software, and other commonly accepted instructional tools as
343 prescribed by district school board rule; and

344 3. The repair and renovation of textbooks and library books
345 and replacements for items that were part of previously
346 purchased instructional materials.

347 (c) District school boards may use 100 percent of that
348 portion of the annual allocation designated for the purchase of

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349 instructional materials for kindergarten, and 75 percent of that
 350 portion of the annual allocation designated for the purchase of
 351 instructional materials for first grade, to purchase materials
 352 not on the state-adopted list.

353 (5) Each district school board is responsible for the
 354 content of all instructional materials used in a classroom,
 355 whether purchased from the state-adopted instructional materials
 356 list or through a district instructional materials program under
 357 s. 1006.283 ~~an adoption process or otherwise purchased or made~~
 358 ~~available in the classroom~~. Each district school board shall
 359 adopt rules, and each district school superintendent shall
 360 implement procedures, which that:

361 (a) Maximize student use of the district-approved
 362 instructional materials, whether purchased from the state-
 363 adopted instructional materials list or purchased through a
 364 district instructional materials program under s. 1006.283.

365 (b) If the instructional materials are purchased from the
 366 state-adopted instructional materials list, provide a process
 367 for public review of, public comment on, and the adoption of
 368 instructional materials which that satisfies the requirements of
 369 s. 1006.283(2)(b)8., 9., and 11.; or, if purchased through a
 370 district instructional materials program, implement a program
 371 that fully complies with s. 1006.283.

372 (8) Subsections ~~(3)~~ (4) and (6) do not apply to a
 373 district school board or a consortium of school districts which
 374 ~~that~~ implements an instructional materials program pursuant to
 375 s. 1006.283 except that, ~~by the 2015-2016 fiscal year,~~ each
 376 district school board shall use at least 50 percent of the
 377 annual instructional materials allocation for the purchase of

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378 ~~digital or electronic~~ instructional materials that are aligned
 379 ~~align~~ with state standards adopted by the State Board of
 380 Education pursuant to s. 1003.41.

381 Section 5. Paragraphs (b) and (c) of subsection (19) of
 382 section 1002.20, Florida Statutes, are amended to read:

383 1002.20 K-12 student and parent rights.—Parents of public
 384 school students must receive accurate and timely information
 385 regarding their child's academic progress and must be informed
 386 of ways they can help their child to succeed in school. K-12
 387 students and their parents are afforded numerous statutory
 388 rights including, but not limited to, the following:

389 (19) INSTRUCTIONAL MATERIALS.—

390 (b) *Curricular objectives.*—The parent of each public school
 391 student has the right to receive effective communication from
 392 the school principal as to the manner in which instructional
 393 materials are used to implement the school's curricular
 394 objectives, in accordance with s. 1006.28(4)(a) ~~the provisions~~
 395 ~~of s. 1006.28(3)(a).~~

396 (c) *Sale of instructional materials.*—Upon request of the
 397 parent of a public school student, the school principal shall
 398 ~~must~~ sell to the parent any instructional materials used in the
 399 school, in accordance with s. 1006.28(4)(c) ~~the provisions of s.~~
 400 ~~1006.28(3)(c).~~

401 Section 6. Section 1006.42, Florida Statutes, is amended to
 402 read:

403 1006.42 Responsibility of students and parents for
 404 instructional materials.—All instructional materials purchased
 405 under ~~the provisions of~~ this part are the property of the
 406 district school board. When distributed to the students, these

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407 instructional materials are on loan to the students while they
408 are pursuing their courses of study and are to be returned at
409 the direction of the school principal or the teacher in charge.
410 Each parent of a student to whom or for whom instructional
411 materials have been issued, is liable for any loss or
412 destruction of, or unnecessary damage to, the instructional
413 materials or for failure of the student to return the
414 instructional materials when directed by the school principal or
415 the teacher in charge, and shall pay for such loss, destruction,
416 or unnecessary damage as provided under s. 1006.28(4) ~~s.~~
417 ~~1006.28(3)~~.
418 Section 7. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 4, 2017

I respectfully request that **Senate Bill #1210**, relating to Instructional Materials for K-12 Public Education, be placed on the:

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

A handwritten signature in blue ink that reads "Tom Lee".

Senator Tom Lee
Florida Senate, District 20

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-20-17

Meeting Date

1210

Bill Number (if applicable)

Topic Instructional Materials For K-12

Amendment Barcode (if applicable)

Name Shawn Frost

Job Title president

Address 113 S. Monroe St. #101

Phone 850 391-0421

Street

Tallahassee

City

FL

State

32301

Zip

Email info@FCSBM.org

Speaking: For Against Information

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

Representing Florida Coalition of School Board Members.

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)

4/20

Meeting Date

CS 1210

Bill Number (if applicable)

Topic CS 1210

Amendment Barcode (if applicable)

Name KEITH FLAUGH

Job Title MANAGING DIRECTOR - E

Address 1390 QUINCY CT

Phone 239-250-3320

Street

MARCO ISLAND, FL 34145

City

State

Zip

Email KFLAUGH@me.com

Speaking: For Against Information

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

Representing Florida Citizens Alliance

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: KN 412

Case No.:

Type:

Caption: Senate Appropriations Committee

Judge:

Started: 4/20/2017 10:01:08 AM

Ends: 4/20/2017 12:33:00 PM

Length: 02:31:53

10:01:07 AM Sen. Latvala (Chair)
10:02:34 AM S 800
10:02:38 AM Sen. Broxson
10:03:01 AM Sen. Flores (Chair)
10:03:15 AM Am. 286812
10:03:17 AM Sen. Broxson
10:03:37 AM Sen. Flores
10:03:52 AM S 800 (cont.)
10:03:58 AM Chris Hansen, Ballard Partners, Walgreens (waives in support)
10:04:01 AM Dorene Barker, Associate State Director, AARP (waives in support)
10:05:07 AM S 554
10:05:24 AM Sen. Young
10:06:01 AM Sen. Flores
10:06:20 AM Eric Criss, President, Beer Industry of Florida (waives in opposition)
10:06:34 AM Josh Aubuchon, General Counsel, Florida Brewers Guild
10:07:09 AM Sen. Flores
10:07:15 AM Mitchell Rubin, Executive Director, Florida Beer Wholesalers Association (waives in opposition)
10:08:17 AM Sen. Latvala (Chair)
10:08:33 AM S 1416
10:08:40 AM Sen. Young
10:09:04 AM Sen. Latvala
10:10:24 AM S 1600
10:10:27 AM Sen. Young
10:11:31 AM Sen. Latvala
10:11:46 AM Am. 164220
10:11:54 AM Sen. Young
10:12:06 AM Sen. Latvala
10:12:35 AM Am. 885964
10:12:40 AM Sen. Young
10:12:45 AM Sen. Latvala
10:12:52 AM Am. 549508
10:12:57 AM Sen. Young
10:13:13 AM Sen. Latvala
10:13:21 AM Sen. Powell
10:13:28 AM Sen. Young
10:14:03 AM Sen. Latvala
10:14:22 AM Am. 322168
10:14:26 AM Sen. Young
10:14:39 AM Sen. Latvala
10:14:56 AM S 1600 (cont.)
10:15:04 AM Josh Aubuchon, Attorney, New York Life (waives in support)
10:15:10 AM Candice Ericks, Life Insurance Settlement Association (waives in support)
10:16:39 AM S 400
10:16:41 AM Sen. Perry
10:17:15 AM Sen. Latvala
10:17:21 AM Am. 338394
10:17:36 AM S 400 (cont.)
10:17:43 AM Richard Turner, General Counsel and Vice President of Governmental Relations, Florida Restaurants and Lodging Association (waives in support)
10:17:49 AM Josh Aubuchon, General Counsel, Florida Brewers Guild (waives in support)
10:17:56 AM Andrew Forst, Legislative Coordinator, Department of Business and Professional Regulation (waives in support)

10:18:09 AM Am. 411446
10:18:23 AM S 400 (cont.)
10:19:24 AM S 534
10:19:28 AM Sen. Perry
10:20:00 AM Sen. Latvala
10:20:04 AM Sen. Perry
10:20:07 AM Sen. Latvala
10:20:23 AM Sen. Gibson
10:20:45 AM Sen. Perry
10:21:01 AM Sen. Gibson
10:21:05 AM Sen. Perry
10:21:17 AM Sen. Gibson
10:21:41 AM Sen. Perry
10:22:27 AM Sen. Gibson
10:22:39 AM Sen. Perry
10:23:39 AM Sen. Latvala
10:23:45 AM Sen. Powell
10:24:09 AM Sen. Perry
10:24:18 AM Sen. Powell
10:24:27 AM Sen. Perry
10:24:38 AM Sen. Powell
10:24:53 AM Sen. Perry
10:26:44 AM Sen. Latvala
10:26:49 AM Sen. Bradley
10:27:26 AM Sen. Perry
10:27:47 AM Sen. Bradley
10:28:08 AM Sen. Latvala
10:28:33 AM Jess McCarty, Miami-Dade County (waives in opposition)
10:28:43 AM Kenn Williams (waives in opposition)
10:28:49 AM Larry Dupree (waives in opposition)
10:29:09 AM Theresa King, President, Florida State Building and Construction Trades Council
10:31:17 AM Sen. Latvala
10:31:31 AM Kimberly Smith (waives in opposition)
10:31:49 AM Belinda Riffenburg (waives in opposition)
10:32:18 AM Sen. Latvala
10:32:29 AM Carol Bowen, Deputy Chief Lobbyist, Associated Builders and Contractors
10:37:37 AM Sen. Latvala
10:37:52 AM Melissa Braswell
10:38:14 AM Sen. Latvala
10:38:38 AM Robert Chapman, State Employee
10:38:57 AM Sen. Latvala
10:39:00 AM John Gall (waives in opposition)
10:39:14 AM Gail Marie Perry, Chair, Council of Florida, Communications Workers of America
10:40:34 AM Sen. Latvala
10:40:45 AM Scott Launier
10:41:01 AM Sen. Latvala
10:41:05 AM Glenda Abicht (waives in opposition)
10:41:13 AM Stephen Vanciel (waives in opposition)
10:41:45 AM Eric Poule, Assistant Legislative Director, Florida Association of Counties
10:42:19 AM Sen. Brandes
10:42:34 AM E. Poule
10:42:38 AM Sen. Brandes
10:42:49 AM E. Poule
10:43:05 AM Sen. Brandes
10:43:40 AM E. Poule
10:43:44 AM Sen. Brandes
10:43:59 AM E. Poule
10:44:19 AM Sen. Latvala
10:44:29 AM Bruce Kershner, Associated General Contractors, Northwest Florida Section (waives in support)
10:44:51 AM J.B Clark, Lobbyist, Florida Electrical Workers Association
10:46:17 AM Sen. Latvala
10:46:30 AM William Lawson

10:47:50 AM Sen. Latvala
10:48:01 AM Matthew Land, Political Director, Southeast District of Laborers Union
10:50:49 AM Sen. Latvala
10:51:27 AM Arthur Rosenberg, Attorney, Florida Legal Services
10:51:48 AM Sen. Latvala
10:52:08 AM A. Rosenberg
10:52:13 AM Sen. Latvala
10:52:17 AM A. Rosenberg
10:52:26 AM Sen. Latvala
10:52:36 AM A. Rosenberg
10:52:41 AM Sen. Latvala
10:52:46 AM A. Rosenberg
10:52:52 AM Sen. Latvala
10:52:57 AM Andy Maates, Executive Director, American Federation of State, County & Municipal Employees Florida
(waives in opposition)
10:53:09 AM Kari Hebrank, National Utilities Contractors Association of Florida
10:53:45 AM Sen. Latvala
10:53:50 AM Ellen Baker (waives in opposition)
10:54:01 AM Jim Junecko (waives in opposition)
10:54:13 AM Rich Templin, The American Federation of Labor and Congress of Industrial Organizations (waives in
opposition)
10:54:19 AM Barbara Demone, Florida Now (waives in opposition)
10:54:29 AM Eddy Labrador, Director, Intergovernmental Affairs, Broward County (waives in opposition)
10:54:42 AM Marcus Dixon, Political Director, SEIU Florida (waives in opposition)
10:54:54 AM Chris Rusnak (waives in opposition)
10:54:56 AM Jean Clements (waives in opposition)
10:55:04 AM Valerie Chuchman (waives in opposition)
10:55:25 AM Sen. Bradley
10:57:35 AM Sen. Latvala
10:57:39 AM Sen. Brandes
11:00:47 AM Sen. Gibson
11:02:41 AM Sen. Latvala
11:02:49 AM Sen. Powell
11:04:39 AM Sen. Latvala
11:07:10 AM Sen. Perry
11:11:00 AM Sen. Latvala
11:12:16 AM S 430
11:12:18 AM Sen. Bean
11:12:48 AM Sen. Flores (Chair)
11:12:50 AM Am. 958488
11:12:55 AM Sen. Bean
11:13:07 AM Sen. Flores
11:13:11 AM S 430 (cont.)
11:13:18 AM Chris Schoonover, Consumer Health Alliance (waives in support)
11:14:10 AM S 672
11:14:12 AM Sen. Bean
11:14:36 AM Sen. Flores
11:14:40 AM Sen. Gibson
11:15:18 AM Sen. Bean
11:15:45 AM Sen. Gibson
11:16:09 AM Sen. Bean
11:16:54 AM Sen. Flores
11:16:57 AM Sen. Book
11:17:21 AM Sen. Bean
11:17:32 AM Sen. Flores
11:17:41 AM Maria Valero, State Policy Director, Florida Latina Advocacy Network (waives in opposition)
11:17:46 AM Barbara Devone, FLNOW (waives in opposition)
11:17:51 AM Victoria Zepp, Tenet Health Care (waives in support)
11:18:01 AM Sen. Bean
11:18:17 AM Sen. Flores
11:18:58 AM S 674
11:19:01 AM Sen. Bean

11:19:16 AM Sen. Flores
11:20:14 AM S 260
11:20:24 AM Sen. Simmons
11:21:22 AM Sen. Flores
11:21:26 AM Am. 887240
11:21:56 AM Dennis Strauge, Captain, Orange County Sheriff's Office (waives in support)
11:22:03 AM S 260 (cont.)
11:22:50 AM S 368
11:22:56 AM Am. 757218
11:23:03 AM Sen. Montford
11:23:23 AM Sen. Flores
11:23:27 AM Am. 116774
11:23:30 AM Sen. Stargel
11:23:43 AM Sen. Flores
11:23:50 AM S 368 (cont.)
11:24:45 AM S 446
11:24:50 AM Sen. Stargel
11:25:35 AM Sen. Flores
11:25:41 AM Bruce Kershner, Board Director, Sunshine 811 (waives in support)
11:25:54 AM Kari Hebrank, National Utility Contractors Association of Florida (waives in support)
11:26:44 AM S 682
11:26:50 AM Am. 219746
11:26:54 AM Sen. Stargel
11:27:18 AM Sen. Flores
11:27:25 AM Tom Parker, Director of Reimbursement, Florida Health Care Association (waives in support)
11:27:32 AM Audrey Brown, President and CEO, Florida Association of Health Plans (waives in opposition)
11:27:36 AM S 682 (cont.)
11:28:23 AM S 890
11:28:28 AM Am. 857170
11:28:35 AM Sen. Bean
11:29:06 AM Sen. Flores
11:29:19 AM Sen. Bean
11:29:24 AM Sen. Flores
11:29:28 AM Sen. Bean
11:29:41 AM Sen. Flores
11:29:48 AM Sen. Bean
11:30:01 AM Sen. Flores
11:30:11 AM Susanne Homant, President/CEO, The Able Trust (waives in support)
11:30:19 AM S 890 (cont.)
11:30:59 AM Sen. Latvala (Chair)
11:31:07 AM S 1338
11:31:09 AM Sen. Book
11:31:14 AM Sen. Latvala
11:31:18 AM Am. 265472
11:31:26 AM Sen. Book
11:33:16 AM Sen. Latvala
11:33:52 AM S 1338 (cont.)
11:34:00 AM Richard Pinsky, Rybovich Marine (waives in support)
11:34:11 AM Kelly Mallette, Concerned Waterfront Homeowners, City of Fort Lauderdale (waives in support)
11:35:19 AM S 1452
11:35:23 AM Sen. Book
11:36:29 AM Sen. Latvala
11:36:47 AM Floyd Webb, Florida Taxicab Association (waives in support)
11:37:58 AM S 1726
11:38:00 AM Sen. Montford
11:38:06 AM Sen. Latvala
11:38:10 AM Am. 862852
11:38:24 AM Sen. Montford
11:39:54 AM Sen. Latvala
11:40:17 AM Dr. Latresia Wilson, Vice President, Florida Black Farmers and Agricultural Association
11:42:04 AM Sen. Latvala
11:42:32 AM Robert Clayton, Engineer, Hemp Industries Association

11:45:04 AM Sen. Latvala
11:45:20 AM Jeff Sharkey, President, Medical Marijuana Business Association
11:46:30 AM Sen. Latvala
11:46:44 AM Jodi James, Executive Director, Florida Cannabis Action Network
11:48:03 AM Sen. Flores (Chair)
11:48:17 AM David Hasenauer, CEO, Green Point Consultants (waives in support)
11:48:22 AM Sen. Braynon
11:48:58 AM Sen. Flores
11:49:05 AM S 1726 (cont.)
11:49:13 AM Sen. Montford
11:50:23 AM Sen. Flores
11:51:03 AM S 90
11:51:10 AM Sen. Brandes
11:51:41 AM Sen. Flores
11:51:49 AM Sen. Latvala
11:51:58 AM Sen. Flores
11:52:02 AM Richard Pinsky, Florida Solar Energy Industry Association
11:53:20 AM Brian Lee, Legislative Director, Rethink Energy Action Fund (waives in support)
11:53:24 AM David Cullen, Sierra Club Florida (waives in support)
11:53:30 AM Jeff Sharkey, Capitol Alliance Group, Energy Freedom Coalition of America (waives in support)
11:53:34 AM Susan Glickman, Florida Director, Southern Alliance for Clean Energy (waives in support)
11:53:36 AM Edgar Fernandez, Renew Financial, PACE Provider (waives in support)
11:53:41 AM Kelly Quintero, Legislative Advocate, League of Women Voters of Florida (waives in support)
11:53:44 AM Janet Bowman, Director of Legislative Policy and Strategies, The Nature Conservancy (waives in support)
11:53:48 AM Sean Stafford, Alliance for Solar Choice (waives in support)
11:53:52 AM Tim Parson, Director of Governmental Affairs, Advanced Energy Economy (waives in support)
11:54:08 AM Brian Pitts, Trustee, Justice-2-Jesus
11:55:38 AM Sen. Flores
11:55:42 AM B. Pitts
11:56:00 AM Sen. Flores
11:56:01 AM Donna Simmons, Director of State Government Relations, TECO Energy (waives in support)
11:56:11 AM Sen. Brandes
11:56:51 AM Sen. Flores
11:57:29 AM S 166
11:57:43 AM Am. 431800
11:57:49 AM Sen. Brandes
11:58:13 AM Sen. Flores
11:58:27 AM Richard Turner, General Counsel and Vice President of Governmental Relations, Florida Restaurant and Lodging Association (waives in support)
11:58:29 AM Carolyn Johnson, Policy Director, Florida Chamber of Commerce (waives in support)
11:58:38 AM S 166 (cont.)
11:59:25 AM S 1604
11:59:30 AM Sen. Bracy
12:00:08 PM Sen. Flores
12:00:16 PM Jason Jones, General Counsel, Florida Department of Law Enforcement (waives in support)
12:01:04 PM Sen. Braynon
12:01:38 PM Sen. Bracy
12:01:43 PM Sen. Benacquisto
12:02:00 PM Sen. Flores
12:02:03 PM Sen. Brandes
12:02:29 PM Sen. Flores
12:02:32 PM Sen. Stargel
12:02:40 PM Sen. Flores
12:02:48 PM S 1222
12:02:50 PM Sen. Bradley
12:04:52 PM Sen. Flores
12:05:01 PM Bob Cerra, Governmental Consultant, North East Florida Educational Consortium (waives in support)
12:05:05 PM Debbie Mortham, Advocacy Director, Foundation for Florida's Future (waives in support)
12:05:55 PM S 1406
12:06:01 PM Am. 787872
12:06:11 PM Sen. Powell
12:06:48 PM Sen. Flores

12:07:03 PM Fely Curva, Ph. D., Partner, Curva and Associates LLC, Budd Bell Clearinghouse on Human Services (waives in support)
12:07:08 PM Rivers Buford III, Director of Government Relations, American Heart Association (waives in support)
12:07:12 PM S 1406 (cont.)
12:07:56 PM S 896
12:08:01 PM Am. 188282
12:08:15 PM Sen. Simmons
12:08:42 PM Sen. Flores
12:08:48 PM Sen. Simmons
12:09:17 PM Sen. Flores
12:09:32 PM S 896 (cont.)
12:10:14 PM S 986
12:10:16 PM Am. 824078
12:10:28 PM Sen. Stargel
12:10:41 PM Sen. Flores
12:10:47 PM Am. 934830
12:10:54 PM Sen. Bean
12:11:41 PM Sen. Flores
12:11:44 PM S 986 (cont.)
12:11:49 PM Elizabeth Boyd, Director of Legislative Affairs, CFO Atwater (waives in support)
12:12:38 PM S 1390
12:12:41 PM Sen. Latvala
12:13:31 PM Sen. Flores
12:14:28 PM S 1590
12:14:32 PM Am. 516016
12:14:38 PM Sen. Latvala
12:15:22 PM Sen. Flores
12:15:38 PM Eddy Labrador, Director of Intergovernmental Affairs, Broward County (waives in support)
12:15:44 PM Richard Turner, General Counsel and Vice President of Governmental Relations, Florida Restaurant and Lodging Association (waives in support)
12:15:49 PM Diana Ferguson, Attorney, Miami-Dade County (waives in support)
12:15:54 PM Deborah Flack, President, Florida Shore and Beach Preservation (waives in support)
12:15:57 PM Andrew Rutledge, Public Policy Representative, Florida Realtors (waives in support)
12:16:02 PM Nicole Fogarty, Legislative Affairs Director, St. Lucie County Board of County Commissioners (waives in support)
12:16:05 PM Susan Harbin, Senior Associate Director of Public Policy, Florida Association of Counties (waives in support)
12:16:09 PM Devon West, Legislative Affairs Director, Martin County Board of County Commissioners (waives in support)
12:16:17 PM Lisa Hurley, Flagler County (waives in support)
12:16:23 PM S 1590 (cont.)
12:17:10 PM Sen. Latvala (Chair)
12:17:17 PM S 1210
12:17:26 PM Sen. Lee
12:19:03 PM Sen. Latvala
12:19:10 PM Sen. Lee
12:19:49 PM Sen. Latvala
12:20:01 PM Sen. Lee
12:20:05 PM Sen. Latvala
12:20:19 PM Am. 822152
12:20:29 PM Sen. Lee
12:21:27 PM Sen. Latvala
12:21:35 PM Sen. Powell
12:21:50 PM Sen. Lee
12:22:09 PM Sen. Powell
12:22:23 PM Sen. Lee
12:22:58 PM Sen. Latvala
12:23:13 PM S 1210 (cont.)
12:23:35 PM Keith Flaugh, Managing Director, Florida Citizens Alliance
12:27:10 PM Sen. Latvala
12:27:16 PM Shawn Frost, President, Florida Coalition of School Board Members (waives in support)
12:27:30 PM Sen. Montford

12:30:08 PM	Sen. Latvala
12:30:12 PM	Sen. Stargel
12:30:40 PM	Sen. Latvala
12:31:49 PM	Sen. Flores
12:31:56 PM	Sen. Latvala
12:32:02 PM	Sen. Flores (Chair)
12:32:16 PM	Sen. Montford
12:32:22 PM	Sen. Flores
12:32:25 PM	Sen. Book
12:32:35 PM	Sen. Galvano
12:32:46 PM	Sen. Flores